

KANSAS STORAGE TANK ACT

AS AMENDED BY H.B. 3153 AND S.B.812

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K.S.A. 65-34,100. Kansas storage tank act; statement of legislative findings. The legislature finds that:

- (a) Protection of the environment of this state promotes the health and general welfare of the citizens of this state; and
 - (b) the state's responsibility to promote the public health and welfare requires a comprehensive approach to protect the environment by preventing and remedying the pollution of the state's natural resources and providing funding of the management, conservation and development of those resources.
- History: L. 1989, ch. 186, § 1; May 18.

K.S.A. 65-34,101. Same; citation of act. K.S.A. 1989 Supp. 65-34,101 through 65-34,124 shall be known and may be cited as the Kansas storage tank act.

History: L. 1989, ch. 186, § 2; May 18.

K.S.A. 65-34,102. Definitions. As used in the Kansas storage tank act:

- (a) "Aboveground storage tank" means:
 - (1) Any storage tank in which greater than 90% of the tank volume, including volume of the piping, is not below the surface of the ground; or
 - (2) any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.
- (b) "Aboveground fund" means the aboveground petroleum storage tank release trust fund.
- (c) "Department" means the Kansas department of health and environment;
- (d) "Facility" means all contiguous land, structures and other appurtenances and improvements on the land used in connection with one or more storage tanks;
- (e) "Federal act" means the solid waste disposal act, 42 U.S.C. sections 3152 et seq., as amended, particularly by the hazardous and solid waste amendments of 1984, P.L. 98-616, 42 U.S.C. sections 6991 et seq., as amended by P.L. 99-499, 1986, and rules and regulations adopted pursuant to such federal laws and in effect on the effective date of this act;
- (f) "Financial responsibility" means insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the secretary to provide for taking corrective action, including cleanup and restoration of any damage to the land, air or waters of the state, and compensating third parties for cleanup, bodily injury or property damage resulting from a sudden or non-sudden release of a regulated substance arising from the construction, relining, ownership or operation of an underground storage tank and in the amount specified in the federal act;
- (g) "Guarantor" means any person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator;
- (h) "Operator" means any person in control of or having responsibility for the daily operation of a storage tank, but such term shall not include a person whose only responsibility regarding such storage tank is filling such tank with a regulated substance and who does not dispense or have control of the dispensing of regulated substances from the storage tank;
- (i) "Own" means to hold title to or possess an interest in a storage tank or the regulated substance in a storage tank;
- (j) (1) "Owner" means any person who:

- (A) Is or was the owner of any underground storage tank which was in use on November 8, 1984, or brought into use subsequent to that date,
- (B) in the case of an underground storage tank in use prior to November 8, 1984, owned such tank immediately prior to the discontinuation of its use;
- (C) is or was the owner of any aboveground storage tank which was in use on July 1, 1992, or brought into use subsequent to that date; or
- (D) in the case of an aboveground storage tank in use prior to July 1, 1992, owned such tank immediately prior to the discontinuation of its use.

(2) Owner does not include:

- (A) A person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the storage tank; and
- (B) any city or county which obtains a storage tank or regulated substance as a result of tax foreclosure proceedings;

- (k) "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, state, interstate body, municipality, commission, political subdivision or any agency, board, department or bureau of this state or of any other state or of the United States government;
- (l) "Petroleum" means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pound per square inch absolute), including but not limited to, gasoline, gasohol, diesel fuel, fuel oils and kerosene;
- (m) "Petroleum product" means petroleum other than crude oil;
- (n) "Petroleum storage tank" means any storage tank used to contain an accumulation of petroleum;
- (o) "Regulated substance" means petroleum or any element, compound, mixture, solution or substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 of the United States as in effect on January 1, 1989, but not if regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Secs. 6921 through 6939b), as in effect on January 1, 1989;
- (p) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into groundwater, surface water or soils;
- (q) "Removal" means the process of removing or disposing of a storage tank, no longer in service, and also shall mean the process of abandoning such tank, in place;
- (r) "Repair" means modification or correction of a storage tank through such means as relining, replacement of piping, valves, fillpipes, vents and liquid level monitoring systems, and the maintenance and inspection of the efficacy of cathodic protection devices, but the term does not include the process of conducting a tightness test to establish the integrity of a tank;
- (s) "Secretary" means the secretary of health and environment;
- (t) "Storage tank" means any one or combination of tanks used to contain an accumulation of regulated substances, the associated piping and ancillary equipment and the containment system;
- (u) "Tank" means a stationary device designed to contain an accumulation of substances and constructed of non-earthen materials such as concrete, steel or plastic, that provide structural support;
- (v) "Terminal" means a bulk storage facility for storing petroleum supplied by pipeline or marine vessel;
- (w) "Trade secret" means, but is not limited to, any customer lists, any formula, compound, production data or compilation of information which is not patented and which is known only to certain individuals within a commercial concern using it to fabricate, produce or compound an article of trade, or any service having commercial value, which gives its user

an opportunity to obtain a business advantage over competitors who do not know or use it;

- (x) "Underground storage tank" means any storage tank in which 10% or more of the tank volume, including volume of the piping, is below the surface of the ground; Underground storage tank does not include any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.
- (y) "Underground storage tank contractor" or "contractor" means a business which holds itself out as being qualified to install, repair or remove underground storage tanks;
- (z) "Underground fund" means the underground petroleum storage tank release trust fund.
- (aa) "Underground storage tank installer" or "installer" means an individual who has an ownership interest or exercises a management or supervisory position with an underground storage tank contractor. The term shall include the crew chief, expeditor, engineer, supervisor, leadman or foreman in charge of a tank installation project.
History: L. 1989, ch. 186, § 3; L. 1992, ch. 311, § 1; L. 1996, ch. 125, § 1; July 1.

K.S.A. 65-34,103. Exceptions to application of act. Except as provided in K.S.A. 65-34,119 and amendments thereto, the Kansas storage tank act shall not apply to:

- (a) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (b) tanks used for storing heating oil for consumptive use on a single family residential premise where stored;
- (c) a pipeline facility, including gathering lines, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968; and
 - (2) the hazardous liquid pipeline safety act of 1979; or
 - (3) state laws relating to intrastate pipelines comparable to the provisions of law referred to in subsections (c)(1) and (2);
- (d) surface impoundments, pits, ponds, septic tanks or lagoons;
- (e) storm water or waste water collection systems;
- (f) flow-through process tanks;
- (g) liquid traps, storage tanks or associated gathering lines directly related to oil or gas production and gathering operations;
- (h) aboveground storage tanks of agricultural materials regulated by the state board of agriculture;
- (i) aboveground storage tanks located at a petroleum refining facility;
- (j) pipeline terminals;
- (k) aboveground tanks of less than 660 gallons capacity;
- (l) storage tanks associated with oil and natural gas production; and
- (m) electrical equipment which has as part of its design a storage tank containing one or more regulated substances.
History: L. 1989, ch. 186, § 4; L. 1992, ch. 311, § 2; July 1.

K.S.A. 65-34,104. Same; notification to department of tank's existence; form.

- (a) Each owner of a storage tank shall notify the department of the tank's existence, including age, size, type, location, associated equipment and uses.
- (b) In addition and to the extent known, each owner of an underground storage tank which has not been removed, but was taken out of service after January 1, 1974, and prior to May 8, 1986, shall notify the department of the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the capacity, type and location of the tank, and the type and quantity of substances stored in the tank on the date taken out of operation.
- (c) Notice shall be made on an approved form provided by the department.
History: L. 1989, ch. 186, § 5; May 18.

K.S.A 65-34,105. Rules and regulations.

- (a) The secretary is authorized and directed to adopt rules and regulations necessary to administer and enforce the provisions of this act. Any rules and regulations so adopted shall be reasonably necessary to preserve, protect and maintain the waters and other natural resources of this state, and reasonably necessary to provide for the prompt investigation and cleanup of sites contaminated by a release from a storage tank. In addition, any rules and regulations or portions thereof which pertain to underground storage tanks or the owners and operators thereof shall be adopted for the purpose of enabling the secretary and the department to implement the federal act, and such rules and regulations so adopted shall be consistent with the federal act. Consistent with these purposes, the secretary shall adopt rules and regulations:
 - (1) Establishing performance standards for underground storage tanks first brought into use on or after May 18, 1989. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;
 - (2) establishing performance standards for aboveground storage tanks brought into use after May 18, 1989. The performance standards shall not exceed those performance standards adopted by the administrator of the U.S. environmental protection agency and for new aboveground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;
 - (3) establishing performance standards for the inground repair of underground storage tanks. The performance standards shall include, but are not limited to, specifying under what circumstances an underground storage tank may be repaired and specifying design, construction, installation, release detection, product compatibility standards and warranty;
 - (4) establishing performance standards for maintaining spill and overfill equipment, leak detection systems and comparable systems or methods designed to prevent or identify releases. In addition, the secretary shall establish standards for maintaining records and reporting leak detection monitoring, inventory control and tank testing or comparable systems;
 - (5) establishing requirements for reporting a release and for reporting and taking corrective action in response to a release;
 - (6) establishing requirements for maintaining evidence of financial responsibility to be met by owners and operators of underground storage tanks;
 - (7) establishing requirements for the closure of storage tanks including the removal and disposal of storage tanks and regulated substance residues contained therein to prevent future releases of regulated substances into the environment;
 - (8) for the approval of tank tightness testing methods, including determination of the qualifications of persons performing or offering to perform such testing;
 - (9) establishing site selection and clean-up criteria regarding corrective actions related to a release, which criteria address the following: The physical and chemical characteristics of the released substance, including toxicity,

persistence and potential for migration; the hydrogeologic characteristics of the release site and the surrounding land; the proximity, quality and current and future uses of groundwater; an exposure assessment; the proximity, quality and current and future use of surface water; and the level of the released substance allowed to remain on the facility following cleanup;

- (10) prescribing fees for the following with regard to storage tanks: Registration, issuance of permits, approval of plans for new installations and conducting of inspections. The fees shall be established in such amounts that revenue from such fees does not exceed the amount of revenue required for the purposes provided by subsection (b) of section 4 of 1992 House Bill No. 3153. All fees for underground storage tanks shall be deposited in the state general fund and all fees for aboveground storage tanks shall be deposited in the storage tank fee fund;
 - (11) for determining the qualifications, adequacy of performance and financial responsibility of persons desiring to be licensed as underground storage tank installers or contractors. In adopting rules and regulations, the secretary may specify classes of specialized activities, such as the installation of corrosion protection devices or inground relining of underground storage tanks, and may require persons wishing to engage in such activities to demonstrate additional qualifications to perform these services;
 - (12) prescribing fees for the issuance of licenses to underground storage tank installers and contractors. The fees shall be established in such amounts that revenue from such fees does not exceed the amount of revenue determined by the secretary to be required for administration of the provisions of K.S.A. 1991 Supp. 65-34,110 and amendments thereto; and
 - (13) adopting schedules requiring the retrofitting of underground storage tanks in existence on May 18, 1989, and aboveground storage tanks in existence on July 1, 1992, and for the retirement from service of underground storage tanks placed in service prior to May 18, 1989, and aboveground storage tanks placed in service prior to July 1, 1992. Such schedules shall be based on the age and location of the storage tank and the type of substance stored. Such retrofitting shall include secondary containment, corrosion protection, linings, leak detection equipment and spill and overfill equipment.
- (b) In adopting rules and regulations under this section, the secretary shall take notice of rules and regulations pertaining to fire prevention and safety adopted by the state fire marshal pursuant to subsection (a)(1) of K.S.A. 31-133, and amendments thereto.
 - (c) Nothing in this section shall interfere with the right of a city or county having authority to adopt a building or fire code from imposing requirements more stringent than those adopted by the secretary pursuant to subsections (a)(1), (2), (3), (7) and (13), or affect the exercise of powers by cities, counties and townships regarding the location of storage tanks and the visual compatibility of aboveground storage tanks with surrounding property.
History: L. 1989, ch. 186, § 6; L. 1992, ch. 305, § 1; July 1.

K.S.A. 65-34,106 Permit to construct, install, modify or operate storage tank.

- (a) No person shall construct, install, modify or operate a storage tank unless a permit or other approval is obtained from the secretary. Applications for permits shall include proof that the required performance standards will be met and applications for underground storage tank permits shall include evidence of financial responsibility. For purposes of administering this section, any underground storage tank registered with the department on May 18, 1989, and any aboveground storage tank registered with the department on July 1, 1992, shall be deemed to be a permitted storage tank so long as the owner or operator shall comply with all applicable provisions of this act.
- (b) Permits may be transferred upon acceptance of the permit obligations by the person who is to assume the ownership or operational responsibility of the storage tank from the previous owner or operator. The department shall furnish a transfer of permit form providing for acceptance of the permit obligations. A transfer of permit form shall be submitted to the department not less than seven days prior to the transfer of ownership or operational responsibility of the storage tank.
- (c) The secretary may deny, suspend or revoke any permit issued or authorized pursuant to this act if the secretary finds,

after notice and the opportunity for a hearing conducted in accordance with the Kansas administrative procedure act, that the person has:

- (1) Fraudulently or deceptively obtained or attempted to obtain a storage tank permit;
 - (2) failed at any time to maintain a storage tank in accordance with the requirements of this act or any rule and regulation promulgated hereunder;
 - (3) failed at any time to comply with the requirements of this act or any rule and regulation promulgated hereunder; or
 - (4) failed at any time to make any retrofit or improvement to a storage tank which is required by this act or any rule and regulation promulgated hereunder.
- (d) Any person aggrieved by an order of the secretary may appeal the order in accordance with provisions of the act for judicial review and civil enforcement of agency actions.
History: L. 1989, ch. 186, § 7; L. 1992, ch. 311, § 5; July 1.

K.S.A. 65-34,107. Same; evidence of financial responsibility required; limitation of liability.

- (a) Each owner or operator of an underground storage tank shall provide evidence of financial responsibility.
- (b) If the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this act may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.
- (c) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. This subsection does not limit any other state or federal statutory, contractual or common law liability of a guarantor to its owner or operator, including, but limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other applicable law.
History: L. 1989, ch. 186, § 8; May 18.

K.S.A. 65-34,108 Enforcement of act; duties of owner or operator; records, reports, documents, other information.

- (a) For the purposes of developing or assisting in the development of any rule and regulation, conducting any study or enforcing the provisions of this act:
 - (1) It shall be the duty of any owner or operator of a storage tank, upon the request of any duly authorized representative of the secretary made at any reasonable time, to furnish information relating to the storage tank, including tank equipment and contents, to conduct monitoring or testing, to permit such authorized representative to have access to and to copy all records relating to such tank.
 - (2) Any authorized representative of the secretary is authorized to enter at reasonable times any establishment or place where a storage tank is located, to inspect and obtain samples from any person of any regulated substance contained in such storage tank, and to conduct or require the owner or operator to conduct monitoring or testing of such storage tank, associated equipment, tank contents or surrounding soils, air, surface water or groundwater.
- (b) Each inspection shall be commenced and completed with reasonable promptness.
- (c) Any records, reports, documents or information obtained from any person under this act shall be available to the public except as provided in this section.
- (d) Any person submitting any records, reports, documents or information required by this act, may, upon a showing

satisfactory to the secretary, claim any portion of such record, report, document or information confidential as a trade secret. The department shall establish procedures to insure that trade secrets are utilized by the secretary or any authorized representative of the secretary only in connection with the responsibilities of the department pursuant to this act. Trade secrets shall not be otherwise used or disseminated by the secretary or any representative of the secretary without the consent of the person furnishing the information.

- (e) Notwithstanding any limitation contained in this section, all information reported to, or otherwise obtained by the department under this act, shall be made available to the administrator of the United States environmental protection agency, or an authorized representative of the administrator, upon written request. In submitting any trade secrets to such administrator or the authorized representative of such administrator, the secretary shall submit the claim of confidentiality to the administrator or authorized representative of the administrator.
History: L. 1989, ch. 186, § 9; L. 1992, ch. 311, § 6, July 1.

K.S.A. 65-34,109 Unlawful acts; penalties.

- (a) It shall be unlawful for any person to:
 - (1) Deposit, store or dispense, or permit any person to deposit, store or dispense, any regulated substance into any storage tank which does not comply with the provisions of this act, the rules and regulations promulgated hereunder, or any order of the secretary;
 - (2) construct, install, modify or operate a storage tank without any required permit or other written approval from the secretary or otherwise be in violation of the rules and regulations, standards or orders of the secretary;
 - (3) prevent or hinder a properly identified officer or employee of the department or other authorized agent of the secretary from entering, inspecting or sampling at a facility on which a storage tank is located or from copying records concerning such storage tank as authorized by this act;
 - (4) knowingly make any false material statement or representation in any application, record, report, permit or other document filed, maintained or used for purposes of compliance with this act;
 - (5) knowingly destroy, alter or conceal any record required to be maintained by this act or rules and regulations promulgated hereunder; or
 - (6) knowingly allow a release, knowingly fail to report a release or knowingly fail to take corrective action in response to a release of a regulated substance in violation of this act or rules and regulations promulgated hereunder.
- (b) Any person who violates any provision of subsection (a) shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished as provided by law.
History: L. 1989, ch. 186, § 10; L. 1992, ch. 311, § 7; July 1.

K.S.A. 65-34,110. Same; licensure of tank installers and contractors; duties of secretary; examinations; inspections; unlawful acts, penalties; qualifications for licensure; reciprocal agreements; validity of license

- (a) It shall be unlawful for any person to practice, or hold oneself out as authorized to practice, as an underground storage tank installer or underground storage tank contractor or use other words or letters to indicate such person is a licensed installer or contractor unless the person is licensed in accordance with this section.
- (b) The secretary shall:
 - (1) Develop and administer a written examination to candidates for licensing under the terms of this section. Questions used in the examination shall be derived from standard instructions and recommended practices published by such authorities as the Petroleum Equipment Institute, American Petroleum Institute, Steel Tank Institute, National Association of Corrosion Engineers, Fiberglass Tank and Pipe Manufactures Institute, National

Fire Protection Association, Western Fire Chiefs Association and Underwriters Laboratories. Additional questions shall be derived from state and federal regulations applicable to storage tanks. The secretary shall make available sample questions and related material to qualified candidates to be used as a study guide in preparation for the examination.

- (2) Conduct at least one on-site inspection annually, observing procedures used by each licensed underground storage tank contractor for installing, repairing or removing an underground storage tank.
- (c) Any person who willfully violates any provision of subsection (a) shall be guilty of a class C misdemeanor and, upon conviction thereof, shall be punished as provided by law.
- (d) Prior to 12 months after the effective date of this act, the department shall conduct written examinations, at such times and locations within the state as the department may designate, for the purpose of identifying installers as being qualified to receive an underground tank installer's license. Each underground tank installer's license shall be issued for a period of two years and shall be subject to periodic renewal thereafter under procedures prescribed by the department.
- (e) Beginning 18 months after the effective date of this act, no contractor shall engage in the installation, repair or removal of an underground storage tank unless such contractor has been issued a contractor license. Each contractor license shall be issued for a period of two years and shall be subject to periodic renewal thereafter under procedures prescribed by the department.
- (f) A contractor must meet the following requirements to qualify for a contractor license:
 - (1) At least one active officer or executive of the business must possess a valid underground storage tank installer's license.
 - (2) The contractor must submit documentation showing that it has insurance, surety bonds or liquid company assets which, in combination, represent a value equal to the value of the largest underground storage tank installation, removal or repair contract performed by the contractor during the previous two years.
 - (3) The contractor must state in its license application and agree that at all times on any and all jobs involving the installation, repair or removal of an underground storage tank, an individual who possesses a valid underground storage tank installer's license will be present at the job site not less than 75% of the time during the progress of the work, and that such installer shall exercise responsible supervisory control over the work.
- (g) The secretary may elect to establish reciprocal arrangements with states having similar licensing requirements and to provide for the licensing in this state of persons who have successfully completed examinations and otherwise qualified for licensure in another state.
- (h) A valid interim contractor license or an unexpired contractor license shall be valid in all counties and municipalities throughout the state, and the issuance of either license to a contractor shall serve as authority for the contractor to engage in the installation, repair and removal of underground storage tanks in any jurisdiction within the state without requirement for obtaining additional county or local licenses. However, local jurisdictions may impose more stringent requirements for installation, repair or removal of such tanks than are imposed by state regulations, in which case a contractor shall be required to conduct its operations in the local jurisdiction in conformity with the local requirements. History: L. 1989, ch. 186, § 11; May 18.

K.S.A. 65-34,111. Same; denial, suspension or revocation of license, when.

The secretary may deny any license applied for, or suspend or revoke any license issued, pursuant to K.S.A. 1989 Supp. 65-34,110 if the secretary finds, after notice and the opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant or licensee, whichever is applicable, has:

- (a) Fraudulently or deceptively obtained or attempted to obtain a license;
- (b) failed at any time to meet the qualifications for a license or to comply with any provision or requirement of this act or of any rule and regulation adopted thereunder; or
- (c) failed to comply with local requirements of any jurisdiction within which the licensee has installed, repaired or removed an underground storage tank. History: L. 1989, ch. 186, § 12; May 18.

K.S.A. 65-34,112. Same; agreements between secretary and local governments or agencies thereof to act as secretary's agent to carry out provisions of act.

The secretary and the governing body of any city, county or other political subdivision may enter into agreements authorizing the local fire department, building inspection department, health department, department of environmental control or other municipal, county or local governmental agency, to act as the secretary's agent to carry out the provisions of this act under such terms and conditions as the secretary shall prescribe.

History: L. 1989, ch. 186, § 13; May 18.

K.S.A. 65-34,113 Civil penalties and remedies for violations.

- (a) Any person who violates any provisions of K.S.A. 1991 Supp. 65-34,109 or 65-34,110, and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$10,000 for every such violation, and in case of a continuing violation, everyday such violation continues shall be deemed a separate violation.
- (b) The director of the division of environment, upon a finding that a person has violated any provision of K.S.A. 1991 Supp. 65-34,109 or 65-34,110, and amendments thereto, may impose a penalty within the limits provided in subsection (a), which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.
- (c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Within 15 days after service of the order, any such person may make written request to the secretary for a hearing thereon in accordance with the Kansas administrative procedure act.
- (d) Any action of the secretary pursuant to subsection (c), (e)(1) or (e)(2) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.
- (e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage or release of a regulated substance may present a hazard to the health of persons or to the environment, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. The action the secretary may take shall include, but is not limited to:
 - (1) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing the owner or operator of the storage tank, or the custodian of the regulated substance which constitutes such hazard, to take such steps as are necessary to prevent the act, to eliminate the practice which constitutes such hazard, to investigate the extent of and remediate any pollution resulting from the storage or release. Such order may include, with respect to a facility or site, permanent or temporary cessation of operation.
 - (2) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing an owner, tenant or holder of any right of way or easement of any real property affected by a known release from a storage tank to permit entry on to and egress from that property, by officers, employees, agents or contractors of the department or of the person responsible for the regulated substance or the hazard, for the purposes of monitoring the release or to perform such measures to mitigate the release as the secretary shall specify in the order.
 - (3) Commencing an action to enjoin acts or practices specified in this subsection or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.
 - (4) Applying to the appropriate district court for an order of that court directing compliance with the order of the secretary pursuant to the act for judicial review and civil enforcement of agency actions. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection shall have precedence over other cases in respect to order of trial.
- (f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought it shall be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

K.S.A. 65-34,114 Underground petroleum storage tank release trust fund.

- (a) There is hereby established as a segregated fund in the state treasury the underground petroleum storage tank release trust fund, which shall be a continuation of the petroleum storage tank release trust fund. The underground fund shall be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the underground fund:
- (1) The applicable proceeds of the environmental assurance fee imposed by this act;
 - (2) any moneys recovered by the state under the provisions of this act relating to underground storage tanks, including administrative expenses, civil penalties and moneys paid under an agreement, stipulation or settlement;
 - (3) interest attributable to investment of moneys in the underground fund;
 - (4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the underground fund, but excluding federal grants and cooperative agreements; and
 - (5) amounts transferred to the underground fund by the plan adopted pursuant to K.S.A. 1991 Supp. 65-34,126 and amendments thereto, as provided by K.S.A. 1991 Supp. 65-34,126 and amendments thereto.
- (b) The underground fund shall be administered so as to assist owners and operators of underground petroleum storage tanks in providing evidence of financial responsibility for corrective action required by a release from any such tank. Moneys deposited in the underground fund may be expended for the purpose of reimbursing owners and operators and such others as provided by this act for the costs of corrective action and for transfers to the plan adopted pursuant to K.S.A. 1991 Supp. 65-34,126 and amendments thereto, as provided by K.S.A. 1991 Supp. 65-34,126 and amendments thereto subject to the conditions and limitations prescribed by this act, but moneys in the underground fund shall not otherwise be used for compensating third parties for bodily injury or property damage caused by a release from an underground petroleum storage tank, other than property damage included in a corrective action plan approved by the secretary. In addition, moneys credited to the underground fund may be expended for the following purposes:
- (1) To permit the secretary to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or potential release from an underground petroleum storage tank;
 - (2) to permit the secretary to take corrective action where the release or potential release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to, providing for alternative water supplies;
 - (3) payment of the state's share of the federal leaking underground storage tank trust fund cleanup costs, as required by the resource conservation and recovery act, 42 U.S.C. § 6991b(h)(7)(B);
 - (4) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 1991 Supp. 65-34,114 through 65-34,124, and amendments thereto, with respect to underground storage tanks, including the cost of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the underground fund;
 - (5) reimbursement of persons as authorized by subsection (g) of K.S.A. 1991 Supp. 65-34,119 and amendments thereto; and
 - (6) payment of refunds as authorized by subsection (h) of K.S.A. 1991 Supp. 65-34,119 and amendments thereto.
- (c) The underground fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the underground fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the underground fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.
- (d) Neither the state of Kansas nor the underground fund shall be liable to an owner or operator for the loss of business, damages or taking of property associated with any corrective or enforcement action taken pursuant to this act.
- (e) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the underground fund interest earnings based on:
- (2) The average daily balance of moneys in the underground fund for the preceding month;
 - (3) the net earnings rate of the pooled money investment portfolio for the preceding month.

- (f) All expenditures from the underground fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

History: L. 1989, ch. 186, § 15; L. 1990, ch. 229, § 1; L. 1992, ch. 305, § 3; L. 1996, ch. 253, § 18; May 23.

K.S.A. 65-34,114a. Same; establishment of petroleum storage tank release trust fund; revenues credited to fund; expenditures from fund; liability of state; interest earned transferred from general fund.

History: L. 1989, ch. 186, § 15; L. 1990, ch 229, § 1; L 1992, ch 272, § 8; Repealed, L. 1996, ch. 251, § 1; Repealed, L. 1996, ch. 253, § 39; May 23.

K.S.A. 65-34,115 Liability for costs of corrective action.

Except as otherwise provided in this act, an owner or operator of a petroleum storage tank, or both, shall be liable for all costs of corrective action taken in response to a release from such petroleum storage tank. Eligibility to participate in the underground fund may be submitted as evidence of financial responsibility required of owners and operators of underground petroleum storage tanks.

History: L. 1989, ch. 186, § 16; L. 1992, ch 311, § 11; July 1.

K.S.A. 65-34,116. Petroleum storage tank release compensation advisory board.

History: L. 1989, ch. 186, § 17; L. 1992, ch 311, § 12; Repealed, L. 1996, ch. 125, § 5; May 23.

K.S.A. 65-34,117 Environmental assurance fee; disposition of proceeds.

- (a) There is hereby established on and after July 1, 1992, an environmental assurance fee of \$.01 on each gallon of petroleum product, other than aviation fuel, manufactured in or imported into this state. The environmental assurance fee shall be paid by the manufacturer, importer or distributor first selling, offering for sale, using or delivering petroleum products within this state. The environmental assurance fee shall be paid to the department of revenue at the same time and in the same manner as the inspection fee established pursuant to K.S.A. 55-426, and amendments thereto, is paid. The secretary of revenue shall remit daily the environmental assurance fees paid hereunder to the state treasurer, who shall deposit the same in the state treasury to the credit of either the aboveground fund or underground fund, as provided by subsection (b). Exchanges of petroleum products on a gallon-for-gallon basis within a terminal and petroleum product which is subsequently exported from this state shall be exempt from this fee.
- (b) Moneys collected from the environmental assurance fee imposed by this section shall be credited as follows:
- (1) At any time when the unobligated principal balance of the underground fund is equal to \$2,000,000 or less, the moneys shall be credited to the underground fund until the unobligated principal balance of underground fund equals or exceeds \$5,000,000.
 - (2) At any time when the unobligated principal balance of the aboveground fund is equal to \$500,000 or less and the moneys are not required to be credited to the underground fund under subsection (b)(1), such moneys shall be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first. At any time when the unobligated principal balance of the aboveground fund exceeds \$1,500,000, the excess shall be transferred to the underground fund.
 - (3) At any time when the moneys cease to be credited to aboveground fund before the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000, such moneys shall again be credited to the aboveground fund when the unobligated principal balance of the underground fund equals or exceeds \$5,000,000. Such moneys shall continue to be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first.
- (c) At any time when subsections (b)(1), (b)(2) and (b)(3) do not require moneys to be credited to either the underground fund or the aboveground fund, no environmental assurance fees shall be levied unless and until such time as the unobligated principal balance in the underground fund is less than or equal to \$2,000,000 or , the unobligated principal balance in the aboveground fund is less than or equal to \$500,000 in which case the collection of the environmental assurance fee will resume within 90 days following the end of the month in which such unobligated balance occurs. If no environmental assurance fees are being levied, the director of accounts and reports shall notify the secretary of revenue whenever the unobligated balance in the underground fund is \$2,000,000 or the unobligated principal balance in the aboveground fund is \$500,000, and the secretary of revenue shall then give notice to each person subject to the environmental assurance fee as to the imposition of the fee and the duration thereof.

The director of accounts and reports shall cause to be published each month, in the second issue of the Kansas register published in such month, the amount of the unobligated balances in the underground fund and the aboveground fund on the last day of the preceding calendar month.

- (d) Every manufacturer, importer or distributor of any petroleum product liable for the payment of environmental assurance fees as provided in this act, shall report in full and detail before the 25th day of every month to the secretary of revenue, on forms prepared and furnished by the secretary of revenue, and at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of fees due on all petroleum products subject to such fee during the preceding month.
- (e) All fees imposed under the provisions of this section and not paid on or before the 25th day of the month succeeding the calendar month in which such petroleum products were subject to such fee shall be deemed delinquent and shall bear interest at the rate of 1% per month, or fraction thereof, from such due date until paid. In addition thereto, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5% thereof. Such penalty shall be added to and collected as a part of such fees by the secretary of revenue.
- (f) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.
History: L. 1989, ch. 186, §18; L. 1990, ch. 229, § 2; L. 1992, ch. 311, § 13; L. 1996, ch. 61, §1; July 1.

K.S.A. 65-34,118 Corrective action; duties of owners and operators; duties of secretary; consent agreement, contents.

- (a) Whenever the secretary has reason to believe that there is or has been a release into the environment from a petroleum storage tank, and has reason to believe that such release poses a danger to human health or the environment, the secretary shall obtain corrective action for such release from the owner or operator, or both, or from any past owner or operator who has contributed to such release. Such corrective action shall be performed in accordance with a plan approved by the secretary. Upon approval of such plan, the owner or operator shall obtain and submit to the secretary at least three bids from persons qualified to perform the corrective action except that, the secretary may waive this requirement upon a showing that the owner or operator has made a good faith effort but has not been able to obtain three bids from qualified bidders.
- (b) If the owner or operator is unable or unwilling to perform corrective action as provided for in subsection (a) or no owner or operator can be found, the secretary may undertake appropriate corrective action utilizing funds from the underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Costs incurred by the secretary in taking a corrective action, including administrative and legal expenses, are recoverable from the owner or operator and may be recovered in a civil action in district court brought by the secretary. Corrective action costs recovered under this section shall be deposited in the underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Corrective action taken by the secretary under this subsection need not be completed in order to seek recovery of corrective action costs, and an action to recover such costs may be commenced at any stage of a corrective action.
- (c) An owner or operator shall be liable for all costs of corrective action incurred by the state of Kansas as a result of a release from a petroleum storage tank, unless the owner or operator, or both, enter into a consent agreement with the secretary in the name of the state within a reasonable period of time, which time period may be specified by rule and regulation. At a minimum, the owner or operator, or both, must agree that:
 - (1) The owner or operator shall be liable for the appropriate amounts pursuant to K.S.A. 1991 Supp. 65-34,119 and amendments thereto;
 - (2) the state of Kansas and the respective fund are relieved of all liability to an owner or operator for any loss of business, damages and taking of property associated with the corrective action;
 - (3) the department or its contractors may enter upon the property of the owner or operator, at such time and in such manner as deemed necessary, to monitor and provide oversight for the necessary corrective action to protect human health and the environment;
 - (4) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof shall not be reimbursable from the respective fund;
 - (5) The owner or operator shall effectuate corrective action according to a plan approved by the secretary pursuant to subsection (a);
 - (6) the liability of the state and the respective fund shall not exceed \$1,000,000, less the deductible amount, for any release from a petroleum storage tank; and
 - (7) such other provisions as are deemed appropriate by the secretary to ensure adequate protection of human health and the environment.

- (d) For purposes of this act, corrective action costs shall include the actual costs incurred for the following:
- (1) Removal of petroleum products from petroleum storage tanks, surface waters, groundwater or soil;
 - (2) investigation and assessment of contamination caused by a release from a petroleum storage tank;
 - (3) preparation of corrective action plans approved by the secretary;
 - (4) removal of contaminated soils;
 - (5) soil treatment and disposal;
 - (6) environmental monitoring;
 - (7) lease, purchase and maintenance of corrective action equipment;
 - (8) restoration of a private or public potable water supply, where possible, or replacement thereof, if necessary; and
 - (9) other costs identified by the secretary as necessary for proper investigation, corrective action planning and corrective action activities to meet the requirements of this act.
- History: L. 1989, ch. 186, § 19; L. 1992, ch. 331, § 14; July 1.

K.S.A. 65-34,119 Reimbursement from aboveground and underground funds; conditions.

- (a) Subject to the provisions of subsection (b), an owner or operator is entitled to reimbursement of reasonable costs of corrective action taken in response to a release from a petroleum storage tank if: (1) The owner or operator is not the United States government or any of its agencies; (2) the owner or operator is in substantial compliance, as provided in subsections (e) and (f); (3) the owner or operator undertakes corrective action, either through personnel of the owner or operator or through response action contractors or subcontracts; and (4) the corrective action is not in response to a release from an aboveground storage tank described in subsection (g) or (h) of K.S.A. 1991 Supp. 65-34,103 and amendments thereto. If the release is from an underground petroleum storage tank, reimbursement shall be from the underground fund and, if the release is from an aboveground petroleum storage tank, reimbursement shall be from the aboveground tank.
- (b) Reimbursement pursuant to subsection (a) is subject to the following provisions:
- (1) Except as provided in subsection (g) and (h), the owner or operator shall be liable for the first costs of corrective action taken in response to a release from any petroleum storage tank in an amount equal to \$3,000 plus \$500 for each such tank owned or operated by the owner or operator at the site of the release or \$100,000, whichever is less;
 - (2) the owner or operator must submit to and receive from the secretary approval of the proposed corrective action plan, together with projected costs of the corrective action;
 - (3) the secretary may, in the secretary's discretion, determine those costs which are allowable as corrective action costs and those which are attributable or ancillary to removal, replacement or retrofitting of storage tanks;
 - (4) the owner or operator, or agents thereof, shall keep and preserve suitable records demonstrating compliance with the approved corrective action plan and all invoices and financial records associated with costs for which reimbursement will be requested;
 - (5) within 30 days of receipt of a complete corrective action plan, or as soon as practicable thereafter, the secretary shall make a determination and provide written notice as to whether the owner or operator responsible for corrective action is eligible or ineligible for reimbursement of corrective action costs, and, should the secretary determine the owner or operator is ineligible, the secretary shall include in the written notice an explanation setting forth in detail the reasons for the determination;
 - (6) the owner or operator shall submit to the secretary a written notice that corrective action has been completed within 30 days of completing corrective action;
 - (7) no later than 30 days from the submission of the notice as required by subsection (b)(6), the owner or operator must submit an application for reimbursement of corrective action costs in accordance with criteria established by the secretary, and the application for reimbursement must include the total amount of the corrective action costs and the amount of reimbursement sought. In no case shall the total amount of reimbursement exceed the lesser of the actual costs of the corrective action or the amount of the lowest bid submitted pursuant to K.S.A. 1991 Supp. 65-34,118 and amendments thereto and approved by the secretary, less the appropriate deductible amount;

- (8) interim payments shall be made to an owner or operator in accordance with the plan approved by the secretary pursuant to K.S.A. 1991 Supp. 65-34,118 and amendments thereto, except that the secretary, for good cause shown, may refuse to make interim payments or withhold the final payment until completion of the corrective action;
 - (9) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof, and costs attributable or ancillary thereto, shall not be reimbursable from the respective fund;
 - (10) the owner or operator shall provide evidence satisfactory to the secretary that corrective action costs equal to the appropriate deductible amount have been paid by the owner or operator, and such costs shall not be reimbursed to the owner or operator;
 - (11) with regard to an underground petroleum storage tank, the owner or operator submits to the secretary proof, satisfactory to the secretary, that:
 - (A) such owner or operator is unable to satisfy the criteria for self-insurance under the federal act; or
 - (B) such owner or operator is able to satisfy the criteria for self-insurance under the federal act but the release is from an underground petroleum storage tank not located at a facility engaged in production or refining of petroleum;
 - (12) with regard to an aboveground petroleum storage tank, the owner or operator submits to the secretary proof, satisfactory to the secretary, that the release is from an aboveground petroleum storage tank not located at a facility engaged in production or refining of petroleum; and
 - (13) the owner or operator shall be liable for all costs which are paid by or for which the owner or operator is entitled to reimbursement from insurance coverage, warranty coverage or any other source.
- (c) For the purpose of determining an owner's or operator's eligibility for reimbursement and the applicable deductible of such owner or operator, the secretary shall consider all owners and operators owned or controlled by the same interests to be a single owner or operator, except that each state agency to which moneys are appropriated shall be considered individually as an owner or operator for such purpose.
- (d) Notwithstanding the provisions of subsection (c) K.S.A. 1991 Supp. 65-34,118 and amendments thereto, should the secretary find that any of the following situations exist, any or all owners or operators shall, in the discretion of the secretary, be liable for 100% of costs associated with corrective action necessary to protect health or the environment, if:
- (1) The release was due to willful or wanton actions by the owner or operator;
 - (2) the owner or operator is in arrears for moneys owed, other than environmental assurance fees, to either the underground fund or the aboveground fund;
 - (3) the release was from a tank not registered with the department;
 - (4) the owner or operator fails to comply with any provision of the agreement specified in subsection (c) of K.S.A. 1991 Supp. 65-34,118 and amendments thereto;
 - (5) the owner or operator moves in any way to obstruct the efforts of the department or its contractors to investigate the presence or effects of a release or to effectuate corrective action;
 - (6) the owner or operator is not in substantial compliance with any provision of this act or rules and regulations promulgated hereunder; or
 - (7) the owner or operator allowed, failed to report or failed to take corrective action in response to such release, knowing or having reason to know of such release.
- (e) Except as otherwise provided in subsections (f) and (g), an owner or operator is in substantial compliance with this act and the rules and regulations adopted hereunder, if:
- (1) Each petroleum storage tank owned or operated by such owner or operator has been registered with the secretary, in accordance with the applicable laws of this state and any rules and regulations adopted thereunder;
 - (2) the owner or operator has entered into an agreement with the secretary, as provided in subsection (c) of K.S.A. 1991 Supp. 65-34,118 and amendments thereto;

- (3) The owner or operator has complied with any applicable financial responsibility requirements imposed by the Kansas storage tank act and the rules and regulations adopted thereunder; and
 - (4) the owner or operator has otherwise made a good faith effort to comply with the federal act if applicable, this act, any other law of this state regulating petroleum storage tanks and all applicable rules and regulations adopted under any of them.
- (f) An owner or operator shall be deemed to be in substantial compliance with this act with respect to the following tanks if such owner or operator has notified the department, on forms provided by the department, of the tank's existence, including age, size, type, location, associated equipment and uses:
- (1) Any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
 - (2) any aboveground tank of less than 660 gallons capacity; and
 - (3) any tank used for storing heating oil for consumptive use on the single family residential premise where stored.
- (g) (1) Except as provided by subsection (g)(2), a person who owns property where a petroleum storage tank is located shall not be required to register such tank to be eligible for reimbursement from the respective fund of all costs of any necessary corrective action taken in response to a release from such tank and shall not be subject to the provisions of subsection (b)(1) if such person has at no time placed petroleum in such tank or withdrawn petroleum from such tank and such person:
- (A) Submitted a corrective action plan prior to July 1, 1990, with respect to an underground petroleum storage tank, or prior to July 1, 1993, with respect to an aboveground petroleum storage tank;
 - (B) acquired such tank before December 22, 1988; or
 - (C) acquired such tank by intestate succession or testamentary disposition.
- (2) A person shall not be eligible for reimbursement under subsection (g)(1) unless the owner or operator of the tank is unable or unwilling to perform corrective action or cannot be found, in which case the secretary may recover all reimbursement paid, and any related administrative and legal expenses, from the owner or operator as provided by subsection (b) of K.S.A. 65-34,118 and amendments thereto.
- (h) An owner or operator shall be entitled, upon written notification to the secretary, to elect between the deductible provided by this section before July 1, 1992, and the deductible provided by this section on and after July 1, 1992, with respect to costs of corrective action taken on or after April 1, 1990, if such owner or operator has applied before July 1, 1992, for reimbursement of such costs from the respective fund. If an owner or operator or former owner or operator has paid a deductible that is greater than the deductible provided by this section on and after July 1, 1992, such owner or operator or former owner or operator may apply to the secretary for a refund of the difference in such deductibles. If the owner or operator or former owner or operator has died or no longer exists, no such refund shall be paid.
History: L . 1989, ch. 186, § 20; L. 1990, ch. 229, § 3; L. 1992, ch. 311, § 15; July 1.

K.S.A. 65-34,119a. Retroactive reimbursement from underground fund.

- (a) An owner or operator shall be entitled to reimbursement from the underground fund for the costs of corrective action taken on or after April 1, 1990, in response to a release from an underground petroleum storage tank which was discovered on or after December 22, 1988, to the extent that such owner or operator would be entitled to reimbursement if the release had been discovered on or after April 1, 1990, including application of all applicable deductibles and conditions of reimbursement imposed by K.S.A. 1991 Supp. 65-34,119 and amendments thereto;
- (b) This section shall be part of and supplemental to the Kansas storage tank act.
History: L. 1990, ch. 229, § 4; L. 1992, ch. 311, § 17; July 1.

K.S.A. 65-34,120. Liability of state and its officers and employees limited; fund liability limits.

- (a) Nothing in this act shall establish or create any liability or responsibility on the part of the secretary, the department or its agents or employees, or the state of Kansas to pay any corrective action costs from any source other than the respective fund created by this act.
- (b) In no event shall the underground fund be liable for the payment of corrective action costs in an amount in excess of the following, less any applicable deductible amounts of the owner or operator:
 - (1) For costs incurred in response to any one release from an underground petroleum storage tank, \$1,000,000;

- (2) subject to the provisions of subsection (a)(4), for an owner or operator of 100 or fewer underground petroleum storage tanks, an annual aggregate of \$1,000,000; and
 - (3) subject to the provisions of subsection (a)(4), for an owner or operator of more than 100 underground petroleum storage tanks, an annual aggregate of \$2,000,000;
- (c) In no event shall the aboveground fund be liable for the payment of corrective action costs in an amount in excess of the following, less the deductible amounts of the owner or operator:
- (1) For cost incurred in response to any one release from an aboveground petroleum storage tank, \$1,000,000;
 - (2) for an owner or operator of 100 or fewer aboveground petroleum storage tanks, an annual aggregate of \$1,000,000; and
 - (3) for an owner or operator of more than 100 aboveground petroleum storage tanks, an annual aggregate of \$2,000,000.
- (d) This act is intended to assist an owner or operator only to the extent provided for in this act, and it is in no way intended to relieve the owner or operator of any liability that cannot be satisfied by the provisions of this act.
- (e) Neither the secretary nor the state of Kansas shall have any liability or responsibility to make any payments for corrective action if the respective fund created herein is insufficient to do so. In the event the respective fund is insufficient to make the payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as moneys are paid into the respective fund.
- (f) No common-law liability, and no statutory liability which is provided in a statute other than in this act, for damages resulting from a release from a petroleum storage tank is affected by this act. The authority, power and remedies provided in this act are in addition to any authority, power or remedy provided in any statute other than a section of this act or provided at common law.
- (g) If a person conducts a corrective action activity in response to a release from a petroleum storage tank, whether or not the person files a claim against the respective fund under this act, the claim and corrective action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution or third party claim.
- History: L. 1989, ch. 186, § 21; L. 1990, ch. 229, § 6; L. 1992, ch. 311, § 18; L. 1996, ch. 125, § 2; July 1.

K.S.A. 65-34,121 Annual report to governor and legislature.

On or before the first day of the regular session of the legislature in each year, the secretary shall prepare and submit a report to the governor and the chairperson, vice-chairperson and ranking minority member of the standing committee on energy and natural resources of the house of representatives and the senate regarding the receipts and disbursements from the underground fund and the aboveground fund during the preceding fiscal year, indicating the extent of the corrective action taken under this act.

History: L. 1989, ch. 186, § 22; L. 1992, ch. 311, § 19; L. 1996, ch. 125, § 3, July 1.

K.S.A. 65-34,122. Same; appeals from orders or decisions of secretary, procedure.

- (a) Any person adversely affected by any order or decision of the secretary may, within 15 days of service of the order or decision, request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.
- (b) Any person adversely affected by any action of the secretary pursuant to this act may obtain review of such action in accordance with the act for judicial review and civil enforcement of agency actions.

History: L. 1989, ch. 186, § 23; May 18.

K.S.A. 65-34,123. Advisory board and funds abolished.

Except as provided in K.S.A. 74-7246, and amendments thereto, the underground fund and the aboveground fund shall be and are hereby abolished on July 1, 2004.

History: L. 1989, ch. 186, § 24; L. 1992, ch. 311, § 20; L. 1996, ch 125, § 4; July 1.

K.S.A. 65-34,124. Same; effective date of K.S.A. 65-34,114 through 65-34,123.

The provisions of K.S.A. 65-34,114 through 65-34,123 shall take effect and be in force on and after April 1, 1990.

History: L. 1989, ch. 186, § 25; May 18.

K.S.A. 65-34,125. Severability.

If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions of this act are severable.

History: L. 1989, ch. 186, § 36; May 18.

K.S.A. 65-34,126. Third party liability insurance plan.

- (a) The commissioner of insurance shall adopt and implement a plan for applicants for insurance who are in good faith entitled to insurance necessary to achieve compliance with the financial responsibility requirements for third party liability imposed by 40 CFR part 280, subpart H, and part 281 adopted by the federal environmental protection agency. Insurers undertaking to transact the kinds of insurance specified in subsection (b) or (c) of K.S.A. 40-1102 and amendments thereto and rating organizations which file rates for such insurance shall cooperate in the preparation and submission to the commissioner of insurance of a plan or plans for the insurance specified in this section. Such plan shall provide:
- (1) Insurance necessary to achieve compliance with the financial responsibility requirements for third party liability imposed by 40 CFR part 280, subpart H, and part 281;
 - (2) for the appointment by the plan of a servicing carrier which shall be: (A) An insurance company authorized to transact business in this state; (B) an insurance company which is listed with the commissioner pursuant to K.S.A. 40-246e and amendments thereto; or (C) a risk retention group, as defined by K.S.A. 40-4101 and amendments thereto, which meets the requirements established under the federal liability risk retention act of 1986 (15 U.S.C. 3901 et seq.) and has registered with the commissioner pursuant to K.S.A. 40-4103 and amendments thereto;
 - (3) reasonable rules governing the plan, including provisions requiring, at the request of the applicant, an immediate assumption of the risk by an insurer or insurers upon completion of an application, payment of the specified premium and deposit of the application and the premium in the United States mail, postage prepaid and addressed to the plan's office;
 - (4) rates and rate modifications applicable to such risks, which rates shall be established as provided by subsection (b);
 - (5) the limits of liability which the insurer shall be required to assume;
 - (6) coverage for only underground storage tanks located within this state;
 - (7) coverage for at least 12 months from the date of the original application with respect to any underground storage tank which has been installed for less than 10 years, and may provide such coverage with respect to any such tank which has been installed 10 or more years, without requiring tank integrity tests, soil tests or other tests for insurability if, within six months immediately preceding application for insurance, the tank has been made to comply with all provisions of federal and state law, and all applicable rules and regulations adopted pursuant thereto, but the plan may provide for renewal or continuation of such coverage to be contingent upon satisfactory evidence that the tank or tanks to be insured continue to be in compliance with such laws and rules and regulations;
 - (8) exclusion from coverage of any damages for non-economic loss and any damages resulting from intentional acts of the insured or agents of the insured;
 - (9) to the extent allowed by law, subrogation of the insurer to all rights of recovery from other sources for damages covered by the plan or plans;
 - (10) an optional deductible of the first \$2,500, \$5,000 or \$10,000 of liability per occurrence at any one location for compensation of third parties for bodily injury and property damaged caused by either gradual or sudden and accidental releases from underground petroleum storage tanks, but no such deductible shall apply to reasonable and necessary attorney fees and other reasonable and necessary expenses incurred in defending a claim for such compensation;
 - (11) coverage only of claims for occurrences that commenced during the term of the policy and that are discovered and reported to the insurer during the policy period or within six months after the effective date of the cancellation or termination of the policy;
 - (12) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner;

- (13) a method whereby adequate reserves are established for open claims and claims incurred but not reported based on advice from an independent actuary retained by the plan at least annually, the cost of which shall be borne by the plan;
 - (14) a method whereby the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year and if, for that year: (A) There is any excess of losses and expenses over premiums earned, plus amounts transferred pursuant to subsection (a)(15), an amount equal to such excess losses and expenses shall be transferred from the underground fund established by K.S.A. 1991 Supp. 65-34,114 and amendments thereto to the plan; or (B) there is any surplus of premiums earned, plus amounts transferred pursuant to subsection (a)(15), over losses, including loss reserves, and expenses sustained, an amount equal to such surplus shall be transferred to such fund from the plan; and
 - (15) a method whereby, during any fiscal year, whenever the losses and expenses sustained by the plan exceed premiums earned, an amount equal to the excess of losses and expenses shall be transferred from the underground fund established by K.S.A. 1991 Supp. 65-34,114 and amendments thereto to the plan upon receipt by the secretary of health and environment of evidence, satisfactory to the secretary, of the amount of the excess losses and expenses.
- (b) The commissioner of insurance shall establish rates, effective January 1 of each year, for coverage provided under the plan adopted pursuant to this section. Such rates shall be reasonable, adequate and not unfairly discriminatory. Such rates shall be based on loss and expense experience developed by risks insured by the plan and shall be in an amount deemed sufficient by the commissioner to fund anticipated claims based upon reasonably prudent actuarial principles, except that:
- (1) Due consideration shall be given to the loss and expense experience developed by similar plans operating or trust funds offering third party liability coverage in other states and the voluntary market; and
 - (2) before January 1, 1992, the annual rate shall be not more than \$500 for each tank for which coverage is provided under the plan with selection of a \$10,000 deductible.

In establishing rates pursuant to this subsection, the commissioner shall establish, as appropriate, lower rates for tanks complying with all federal standards, including design, construction, installation, operation and release detection standards, with which such tanks are or will be required to comply by 40 C.F.R part 280 as in effect on the effective date of this act.

- (c) The commissioner of insurance shall appoint a governing board for the plan. The governing board shall meet at least annually to review and prescribe operating rules of the plan. Such board shall consist of five members appointed as follows: One representing domestic or foreign insurance companies, one representing independent insurance agents, one representing underground storage tank owners and operators and two representing the general public. No member representing the general public shall be, or be affiliated with, an insurance company, independent insurance agent or underground storage tank operator. Members shall be appointed for terms of three years, except that the initial appointment shall include two members appointed for two-year terms and one member appointed for a one-year term, as designated by the commissioner.
- (d) Before adoption of a plan pursuant to this section, the commissioner of insurance shall hold a hearing thereon.
- (e) An insurer participating in the plan adopted by the commissioner of insurance pursuant to this section may pay a commission with respect to insurance assigned under the plan to an agent licensed for any other insurer participating in the plan or to any insurer participating in the plan.
- (f) The commissioner of insurance may adopt such rules and regulations as necessary to administer the provisions of this section.
- (g) The department of health and environment and the plan shall provide to each other such information as necessary to implement and administer the provisions of this section. Any such information which is confidential while in the possession of the department or plan shall remain confidential after being provided to the other pursuant to this subsection.
- (h) This section shall be part of and supplemental to the Kansas storage tank act.
History: L. 1990, ch. 229, § 5; L. 1992, ch. 311, § 21; July 1.

K.S.A. 65-34,127. Severability.

If any provisions of this act or the application thereof to any person or circumstances is held invalid the invalidity does not affect other

provisions or applications of this act which can be given effect without the invalid provisions or application and to this end the provisions of this act are severable.

History: L. 1990, ch. 229, § 7; May 17.

K.S.A. 65-34,128. Storage tank fee fund.

- (a) There is hereby established as a segregated fund in the state treasury the storage tank fee fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:
 - (1) Moneys collected from fees for registration of aboveground storage tanks, issuance of storage tank permits, approval of plans for new storage tank installations and conducting of storage tank inspections;
 - (2) any moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the fund; and
 - (3) interest attributable to investment of moneys in the fund.
- (b) Moneys in the storage tank fee fund shall be expended only for:
 - (1) Enforcement of storage tank performance standards and registration requirements;
 - (2) programs intended to prevent releases from storage tanks; and
 - (3) administration of the provisions of the Kansas storage tank act.
- (c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the storage tank fee fund, interest earnings based on:
 - (1) The average daily balance of moneys in the storage tank fee fund for the preceding month; and and during the period of time specified under this subsection as certified to the board by the director of accounts and reports; and
 - (2) the net earnings rate of the pooled money investment portfolio for the preceding month.
- (d) All expenditures from the storage tank fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.
- (e) This section shall be part of and supplemental to the Kansas storage tank act.
History: L. 1992, ch. 311, § 4; L. 1992, ch. 305, § 2; L. 1996, ch. 253, §19; May 23.

K.S.A. 65-34,129. Aboveground petroleum storage tank release trust fund.

- (a) There is hereby established as a segregated fund in the state treasury the aboveground petroleum storage tank release trust fund, to be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the aboveground fund:
 - (1) The applicable proceeds of the environmental assurance fee imposed by this act;
 - (2) any moneys recovered by the state under the provisions of this act relating to aboveground storage tanks, including administrative expenses, civil penalties and moneys paid under an agreement, stipulation or settlement;
 - (3) interest attributable to investment of moneys in the aboveground fund; and
 - (4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the aboveground fund, but excluding federal grants and cooperative agreements.
- (b) Moneys deposited in the aboveground fund may be expended for the purpose of reimbursing owners and operators and such others as provided by this act for the costs of corrective action subject to the conditions and limitations prescribed by this act, but moneys in the aboveground fund shall not otherwise be used for compensating third parties for bodily injury or property damage caused by a release from an aboveground petroleum storage tank, other than property damage included in a corrective action plan approved by the secretary. In addition, moneys credited to the aboveground fund may be expended for the following purposes:
 - (1) To permit the secretary to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or potential release from an aboveground petroleum

storage tank;

- (2) to permit the secretary to take corrective action where the release or potential release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to, providing for alternative water supplies;
 - (3) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 1991 Supp. 65-34,114 through 65-34,124, and amendments thereto, with respect to aboveground storage tanks, including the cost of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the aboveground fund; and
 - (4) reimbursement of persons as authorized by subsection (g) of K.S.A. 1991 Supp. 65-34,119 and amendments thereto.
- (c) The aboveground fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the aboveground fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the aboveground fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.
- (d) Neither the state of Kansas nor the aboveground fund shall be liable to an owner or operator for the loss of business, damages or taking of property associated with any corrective or enforcement action taken pursuant to this act.
- (e) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the aboveground fund interest earnings based on:
- (2) The average daily balance of moneys in the aboveground fund for the preceding month; and
 - (3) the net earnings rate of the pooled money investment portfolio for the preceding month.
- (f) All expenditures from the aboveground fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.
- (g) This section shall be part of and supplemental to the Kansas storage tank act.
History: L. 1992, ch. 311, § 10; L. 1992, ch. 305, § 4; L. 1996, ch. 253, §20, May 23.

K.S.A. 65-34.130. Retroactive reimbursement from aboveground fund.

- (a) An owner or operator shall be entitled to reimbursement from the aboveground fund for the costs of corrective action taken before July 1, 1992, in response to a release from an aboveground petroleum storage tank which was discovered on or after December 22, 1988, and for which written approval of any corrective action taken prior to July 1, 1992, has been granted by the secretary, subject to the following:
- (1) Such owner or operator shall be entitled to reimbursement pursuant to this section only to the extent that such owner or operator would be entitled to reimbursement if the release had been discovered on or after the effective date of this act, including application of all applicable deductibles and conditions of reimbursement imposed by K.S.A. 1991 Supp. 65-34,119 and amendments thereto;
 - (2) such owner or operator shall be entitled to reimbursement pursuant to this section only if the owner or operator submits to the secretary proof, acceptable to the secretary, that such owner or operator is not engaged in production or refining of petroleum products;
 - (3) the aggregate of all reimbursement paid pursuant to this section shall not exceed \$3,200,000;
 - (4) the aggregate of all reimbursement paid to an owner or operator pursuant to this section shall not exceed \$100,000, after all applicable deductibles; and
 - (5) any claim for reimbursement pursuant to this section must be submitted to the secretary not later than December 31, 1992;
- (b) If the aggregate of all reimbursement to which owners and operators would be otherwise entitled pursuant to this section exceeds \$3,200,000, reimbursement shall be paid from the aboveground fund as follows:
- (1) Any owner or operator who owns or operates not more than 12 aboveground petroleum storage tanks and whose

aggregate claims for reimbursement pursuant to this section do not exceed \$20,000, before applicable deductibles, shall receive full payment of the reimbursement to which such owner or operator is entitled unless the aggregate of all reimbursement to which all such owners and operators are entitled exceed \$3,200,000. In that case, such owners and operators shall be paid on a pro rata basis and no payments shall be paid to other owners and operators.

- (2) If the aggregate of all reimbursement paid pursuant to subsection (b)(1) is less than \$3,200,000, owners and operators other than those described in subsection (b)(1) shall receive full payment of the reimbursement to which they are entitled unless the aggregate of all reimbursement to which all such owner and operators are entitled, when added to the amount paid pursuant to subsection (b)(1), exceeds \$3,200,000. In that case, such owners and operators shall be paid on a pro rata basis.
- (c) All reimbursement payable pursuant to this section shall be paid by the secretary prior to May 1, 1993.
- (d) Subject to the provisions of K.S.A. 65-34,119 and amendments thereto, an owner or operator shall be entitled to reimbursement from the aboveground fund for the costs of corrective action taken on or after July 1, 1992, in response to a release from an aboveground petroleum storage tank which was discovered on or after December 22, 1988, if such owner or operator is entitled to reimbursement under subsection (a) for corrective action taken before July 1, 1992, with respect to such release.
- (e) This section shall be part of and supplemental to the Kansas storage tank act.
History: L. 1992, ch. 311, § 16; July 1.

State of Kansas
Department of Health and Environment
Permanent Administrative Regulations
Article 44.- PETROLEUM PRODUCTS STORAGE TANKS

K.A.R. 28-44-1 to 28-44-10. (Authorized by and implementing K.S.A. 65-171d; effective May 1, 1981; revoked Nov. 26, 1990.)

K.A.R. 28-44-11. (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective T-85-7, Feb. 15, 1984; effective May 1, 1984; amended May 1 1985; revoked Nov. 26, 1990.)

K.A.R. 28-44-12. General provisions.

- (a) Any reference in these rules and regulations to standards, procedures, or requirements of 40 CFR part 280 shall constitute a full adoption by reference of the part, subpart, and paragraph so referenced, including any notes and appendices associated therewith, unless otherwise specifically stated in these rules and regulations.
- (b) When used in any provision adopted from 40 CFR part 280 inclusive, references to "the United States" shall be replaced with "the state of Kansas"; "environmental protection agency" or "implementing agency" shall be replaced with the "department"; "administrator" or "regional administrator" shall be replaced with the "secretary"; and "federal register" shall be replaced with the "Kansas register".
- (c) Fees required by K.A.R. 28-44-12 through K.A.R. 28-44-27 shall be in the form of a check or money order made payable to the Kansas department of health and environment. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

K.A.R. 28-44-13. Program scope and interim prohibition. 40 CFR 280.10 and 280.11 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR § 280.10 Applicability.

- (a) The requirements of this Part apply to all owners and operators of an UST system as defined in § 280.12 except as otherwise provided in paragraphs (b), (c), and (d) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of § 280.11.
- (b) The following UST systems are excluded from the requirements of this Part:
 - (1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.
 - (2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.
 - (3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
 - (4) Any UST system whose capacity is 110 gallons or less.
 - (5) Any UST system that contains a de minimis concentration of regulated substances.
 - (6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.
- (c) Deferrals. Subparts B, C, D, E, and G do not apply to any of the following types of UST systems:
 - (1) Wastewater treatment tank systems;
 - (2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);
 - (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;
 - (4) Airport hydrant fuel distribution systems; and
 - (5) UST systems with field-constructed tanks.
- (d) Deferrals. Subpart D does not apply to any UST system that stores fuel solely for use by emergency power generators.

40 CFR § 280.11 Interim Prohibition for deferred UST systems.

- (a) No person may install an UST system listed in § 280.10(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):
 - (1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
 - (2) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
 - (3) Is constructed or lined with material that is compatible with the stored substance.
- (b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

[Note: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with paragraph (b) of this section.]

K.A.R. 28-44-14. Definitions.

- (a) "Department" means the Kansas department of health and environment.
- (b) "EPA" means the federal environmental protection agency.
- (c) "License" means a document issued by the Kansas department of health and environment to qualified individuals or contractors authorizing such persons to engage in the business of installing, removing, modifying, upgrading, repairing, or testing of underground storage tanks. The license will specify the types of services the individual or contractor is qualified to perform.
- (d) The definition of words, terms, and phrases set out in 40 CFR 280.12 as in effect on September 23, 1988 and 40 CFR 280.92 as in effect on November 9, 1989 are adopted by reference except, for the definition of the terms and phrases "operator", "owner", "person", "regulated substance", "release", "repair", "tank", and "underground storage tank" whose definitions from the Kansas storage tank act shall be followed. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR § 280.12 Definitions.

- (a) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.
- (b) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.
- (c) "Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.
- (d) "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.
- (e) "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.
- (f) "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.
- (g) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

- (h) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.
- (i) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.
- (j) "Consumptive use" with respect to heating oil means consumed on the premises.
- (k) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.
- (l) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).
- (m) "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.
- (n) "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.
- (o) "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before [insert date 90 days after date of publication]. Installation is considered to have commenced if:
 - (1) the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,
 - (2)
 - A. either a continuous on-site physical construction or installation program has begun; or,
 - B. the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction at the site or installation of the tank system to be completed within a reasonable time.
- (p) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.
- (q) "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.
- (r) "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water.)
- (s) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.
- (t) "Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.
- (u) "Heating oil" means petroleum that is No. 1, No. 2, No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when

used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

- (v) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.
- (w) "Implementing agency" means EPA, or, in the case of a state with a program approved under section 9004 (or pursuant to a memorandum of agreement with EPA), the designated state or local agency responsible for carrying out an approved UST program.
- (x) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or re-injection into a production or pipeline stream, or may collect and separate liquids from a gas stream.
- (y) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.
- (z) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.
- (aa) "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after [insert date 90 days after the date of publication]. (See also "Existing Tank System.")
- (bb) "Noncommercial purposes" with respect to motor fuel means not for resale.
- (cc) "On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.
- (dd) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Subpart G.
- (ee) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.
- (ff) "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (gg) "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.
- (hh) "Pipeline facilities (Including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.
- (ii) "Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
- (jj) "Residential tank" is a tank located on property used primarily for dwelling purposes.
- (kk) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.
- (ll) "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.
- (mm) "Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.
- (nn) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

- (oo) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.
- (pp) "Underground release" means any belowground release.
- (qq) "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.
- (rr) "UST system" or "Tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
- (ss) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

40 CFR §280.92 Definition of Terms.

When used in this subpart, the following terms shall have the meanings given below:

- (a) "Accidental release" means any sudden or non-sudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.
- (b) "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.
- (c) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.
- (d) "Director of the Implementing Agency" means the EPA Regional Administrator, or, in the case of a state with a program approved under Section 9004, the Director of the designated state or local agency responsible for carrying out an approved UST program.
- (e) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: (1) a 10-K report submitted to the SEC; (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or (3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.
- (f) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought (1) by EPA or a state to require corrective action or to recover the costs of corrective action; (2) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (3) by any person to enforce the terms of a financial assurance mechanism.
- (g) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

[Note: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."]

- (h) "Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.
- (i) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
- (j) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.
- (k) "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.
- (l) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in §§280.95-280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

- (m) "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.
- (n) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

K.A.R. 28-44-15. Application for installation or modification of an underground storage tank. Any person may not install, modify, or repair an underground storage tank or tank system without first obtaining a permit to do so from the department.

- (a) To obtain a permit to construct and operate an underground storage tank or tank system, the following shall be submitted to the department:
 - (1) A completed application on a form provided by the department;
 - (2) Static water level information to indicate if an anchoring system will be required to prevent flotation;
 - (3) A description of the type of anchoring system to be utilized to prevent flotation if the tank is to be installed in a location where the water table is shallower than the base of the tank;
 - (4) A non-refundable \$20.00 per tank application fee.
- (b) To obtain a permit to modify, upgrade or repair an underground storage tank, the following shall be submitted to the department:
 - (1) A completed application on a form supplied by the department describing the work to be performed, provided that repair applications may initially be made to the department by telephone if the repair is essential to protect the public health and environment, in which case a completed written application shall be submitted to the department within 30 days of the completion;
 - (2) Where repairs are performed as a result of a release, evidence of compliance with K.A.R. 28-48-1 and 28-48-2.
- (c) Any changes to the original approved plans shall be reported to the department:
 - (1) When the need for changes becomes apparent after the onsite work activities have commenced, a telephone approval to modify the original plan may be obtained. The name and title of the individual approving the changes shall be documented on the as built drawings which shall reflect the actual details of the job performed;
 - (2) When changes become apparent before the onsite activities have commenced, an amended plan shall be submitted to the department to document changes and receive approval of such changes prior to installation.
- (d) Within 30 day of completion of the work, as built drawings shall be submitted to the department with accurate details of each new installation, modification, repair, and upgrade. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105, 65-34,106(a); effective Nov. 26, 1990.)

K.A.R 28-44-16. Underground storage tank systems: design, construction, installation and notification.

- (a) 40 CFR 280.20, 280.21, and 280.22 as in effect on September 23, 1988 are adopted by reference.

40 CFR § 280.20 Performance standards for new UST systems

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

- (a) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:
 - (1) The tank is constructed of fiberglass-reinforced plastic; or

[Note: The following industry codes may be used to comply with paragraph (a)(1) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass- Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriter's

(2) The tank is constructed of steel and cathodically protected in the following manner:

- (i) The tank is coated with a suitable dielectric material;
- (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
- (iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and
- (iv) Cathodic protection systems are operated and maintained in accordance with § 280.31 or according to guidelines established by the implementing agency; or

[Note: The following codes and standards may be used to comply with paragraph (a)(2) of this section:

- (TT) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";
- (UU) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";
- (VV) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or
- (D) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."]

(3) The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

[Note: The following industry codes may be used to comply with paragraph (a)(3) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."]

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

- (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and
 - (ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (a)(4)(i) of this section for the remaining life of the tank; or
- (5) The tank construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (4) of this section.

(b) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of fiberglass-reinforced plastic; or

[Note: The following codes and standards may be used to comply with paragraph (b)(1) of this section:

- (A) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";
- (B) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";
- (C) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and
- (D) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."]

(2) The piping is constructed of steel and cathodically protected in the following manner:

- (i) The piping is coated with a suitable dielectric material;
- (ii) Field-installed cathodic protection systems are designed by a corrosion expert;

- (iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and
- (iv) Cathodic protection systems are operated and maintained in accordance with § 280.31 or guidelines established by the implementing agency; or

[Note: The following codes and standards may be used to comply with paragraph (b)(2) of this section:

- (A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";
- (B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";
- (C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and
- (D) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."]

- (3) The piping is constructed of metal without additional corrosion protection measures provided that:
 - (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
 - (ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

[Note: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems," may be used to comply with paragraph (b)(3) of this section.]

- (4) The piping construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.

(c) Spill and overfill prevention equipment.

- (1) Except as provided in paragraph (c)(2) of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:
 - (i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
 - (ii) Overfill prevention equipment that will:
 - (A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or
 - (B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm.
- (2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:
 - (i) Alternative equipment is used that is determined by the implementing agency to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1)(i) or (ii) of this section; or
 - (ii) The UST system is filled by transfers of no more than 25 gallons at one time.

- (d) Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

[Note: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph (d) of this section:

- (i) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

- (ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or
 - (iii) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."]
- (e) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (d) of this section by providing a certification of compliance on the UST notification form in accordance with § 280.22.
- (1) The installer has been certified by the tank and piping manufacturers; or
 - (2) The installer has been certified or licensed by the implementing agency; or
 - (3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or
 - (4) The installation has been inspected and approved by the implementing agency; or
 - (5) All work listed in the manufacturer's installation checklists has been completed; or
 - (6) The owner and operator have complied with another method for ensuring compliance with paragraph (d) of this section that is determined by the implementing agency to be no less protective of human health and the environment.

40 CFR § 280.21 Upgrading of existing UST systems.

- (a) Alternatives allowed. Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:
- (1) New UST system performance standards under § 280.20;
 - (2) The upgrading requirements in sections (b) through (d) of this section; or
 - (3) Closure requirements under Subpart G of this Part, including applicable requirements for corrective action under Subpart F.
- (b) Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:
- (1) Interior lining. A tank may be upgraded by internal lining if:
 - (i) The lining is installed in accordance with the requirements of § 280.33, and
 - (ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.
 - (2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of § 280.20(a)(2)(ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:
 - (i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or
 - (ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with § 280.43(d) through (h); or
 - (iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of § 280.43(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or
 - (iv) The tank is assessed for corrosion holes by a method that is determined by the implementing agency to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (b)(2)(i) through (iii) of this section.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

- (i) The lining is installed in accordance with the requirements of § 280.33; and
- (ii) The cathodic protection system meets the requirements of § 280.20(a)(2)(ii), (iii), and (iv).

[Note: The following codes and standards may be used to comply with this section:

- (A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";
- (B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";
- (C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and
- (D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

(c) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of § 280.20(b)(2)(ii), (iii), and (iv).

[Note: The codes and standards listed in the note following § 280.20(b)(2) may be used to comply with this requirement.]

(d) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in § 280.20(c).

40 CFR § 280.22 Notification requirements.

(a) Any owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit, in the form prescribed in Appendix I of this Part, a notice of existence of such tank system to the state or local agency or department designated in Appendix II of this Part to receive such notice.

[Note: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in Appendix I of this Part.]

(b) In states where state law, regulations, or procedures require owners to use forms that differ from those set forth in Appendix I of this Part to fulfill the requirements of this section, the state forms may be submitted in lieu of the forms set forth in Appendix I of this Part. If a state requires that its form be used in lieu of the form presented in this regulation, such form must meet the requirements of Section 9002.

(c) Owners required to submit notices under paragraph (a) of this section must provide notices to the appropriate agencies or departments identified in Appendix II of this Part for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

(d) Notices required to be submitted under paragraph (a) of this section must provide all of the information in Sections I through VI of the prescribed form (or appropriate state form) for each tank for which notice must be given. Notices for tanks installed after [insert 90 days after the date of publication of this rule] must also provide all of the information in Section VII of the prescribed form (or appropriate state form) for each tank for which notice must be given.

(e) All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

- (1) Installation of tanks and piping under § 280.20(e);
- (2) Cathodic protection of steel tanks and piping under § 280.20(a) and (b);
- (3) Financial responsibility under Subpart H of this Part; and
- (4) Release detection under §§ 280.41 and 280.42.

- (f) All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in § 280.20(d).
- (g) Beginning [insert 30 days after date of publication], any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (a) of this section. The form provided in Appendix III of this part may be used to comply with this requirement.

K.A.R. 28-44-16(b) All new underground storage tank installations shall be equipped with observation tubes to comply with the following requirements:

- (1) Observation tubes shall be constructed in accordance with the following:
 - (a) Tubes shall measure four inches in diameter on the inside;
 - (b) Tubes shall extend from the base of the excavation to ground surface;
 - (c) Screened opening shall extend from the base of the excavation to a point no more than three feet below ground surface. The screened openings shall be sized to allow liquid or vapor to be intercepted by the tube without allowing the backfill materials to enter the tube;
 - (d) Tubes shall be equipped with a water tight caps on the top and bottom;
 - (e) The annular space between the tube and pavement shall be sealed. The pavement or ground surface shall be graded in such a manner to prevent surface water from pooling around the tubes.
 - (f) Each observation tube shall be marked and secured to prevent accidental tampering.
- (2) There shall be at least one observation tube for each 400 square feet of excavated area or fraction thereof. Where numerous tank excavations are located on the same property, the number of observation tubes shall be determined for each separate excavation. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

K.A.R. 28-44-17. Underground storage tank operating permit.

- (a) Before an existing underground storage tank permit can be obtained or renewed, the owner shall comply with the following requirements:
 - (1) The underground storage tanks shall be registered with the department as required by K.A.R. 28-44-16;
 - (2) An annual registration fee of \$10.00 per tank shall be paid to the department by each owner or operator of an underground storage tank prior to April 30 of each year;
 - (3) A late notice fee of \$10.00 shall be charged for each facility which fails to submit the required fees prior to April 30 of each year.
- (b) After June 1, 1991 no person shall place a regulated substance in a regulated underground storage tank unless a valid permit is openly displayed at the facility. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105, 65-34,106(a); effective Nov. 26, 1990.)

K.A.R. 28-44-18. Registration of non-regulated underground storage tanks.

- (a) Any owner or operator of a non-regulated tank who wishes to register a tank, shall provide the department with the following information on the forms provided by the department:
 - (1) Owner's name, address, and telephone number;
 - (2) Facility address or location;
 - (3) Tank status;
 - (4) Tank age;
 - (5) Tank capacity;
 - (6) Tank system construction details; and
 - (7) Product stored.

- (b) The registration provided in this section is for the purpose of qualifying an owner or operator to participate in the petroleum storage tank release trust fund. Voluntary registration of non-regulated underground storage tanks will not bring any owner or operator of such a non-regulated tank under the mandatory provisions of the Kansas storage tank act, K.S.A. 1989 Supp. 65-34,101. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

K.A.R. 28-44-19. General operating requirements. 40 CFR 280.30, 280.31, 280.32, 280.33, and 280.34 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR § 280.30 Spill and overflow control.

- (a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

[Note: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further guidance on spill and overflow prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."]

- (b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with § 280.53.

40 CFR § 280.31 Operation and maintenance of corrosion protection.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

- (a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
- (b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
- (1) **Frequency.** All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the implementing agency; and
 - (2) **Inspection criteria.** The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

[Note: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with paragraph (b)(2) of this section.]

- (c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.
- (d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with § 280.34) to demonstrate compliance with the performance standards in this section. These records must provide the following:
- (1) The results of the last three inspections required in paragraph (c) of this section; and
 - (2) The results of testing from the last two inspections required in paragraph (b) of this section.

40 CFR § 280.32 Compatibility.

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

[Note: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

- (A) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and
- (B) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."]

40 CFR § 280.33 Repairs allowed.

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

- (a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

[Note: The following codes and standards may be used to comply with paragraph (a) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."]

- (b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.
- (c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.
- (d) Repaired tanks and piping must be tightness tested in accordance with § 280.43(c) and § 280.44(b) within 30 days following the date of the completion of the repair except as provided in paragraphs (d)(1) through (3), of this section:
 - (1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or
 - (2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in § 280.43(d) through (h); or
 - (3) Another test method is used that is determined by the implementing agency to be no less protective of human health and the environment than those listed above.
- (e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with § 280.31(b) and (c) to ensure that it is operating properly.
- (f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

40 CFR § 280.34 Reporting and recordkeeping.

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

- (a) Reporting. Owners and operators must submit the following information to the implementing agency:
 - (1) Notification for all UST systems (§ 280.22), which includes certification of installation for new UST systems (§ 280.20(e));
 - (2) Reports of all releases including suspected releases (§ 280.50), spills and overfills (§ 280.53), and confirmed releases (§ 280.61);
 - (3) Corrective actions planned or taken including initial abatement measures (§ 280.62), initial site characterization (§ 280.63), free product removal (§ 280.64), investigation of soil and ground-water cleanup (§ 280.65), and corrective action plan (§ 280.66); and
 - (4) A notification before permanent closure or change-in-service (§ 280.71).
- (b) Recordkeeping. Owners and operators must maintain the following information:
 - (1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (§ 280.20(a)(4); § 280.20(b)(3));
 - (2) Documentation of operation of corrosion protection equipment (§ 280.31);
 - (3) Documentation of UST system repairs (§ 280.33(f));
 - (4) Recent compliance with release detection requirements (§ 280.45); and

(5) Results of the site investigation conducted at permanent closure (§ 280.74).

(c) Availability and Maintenance of Records. Owners and operators must keep the records required either:

- (1) At the UST site and immediately available for inspection by the implementing agency; or
- (2) At a readily available alternative site and be provided for inspection to the implementing agency upon request;
- (3) In the case of permanent closure records required under § 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the implementing agency if they cannot be kept at the site or an alternative site as indicated above.

(Note: The recordkeeping and reporting requirements listed in this section have been approved by the Office of Management and Budget and have been assigned OMB Control No. 2050-0068.)

K.A.R. 28-44-20. Underground storage tank contractor licensing.

- (a) Applicants for an underground storage tank contractor license shall submit the following to the department:
 - (1) A completed application on a form provided by the department;
 - (2) A licensing fee of \$200.00 to secure a license to remain in force until two years from the initial licensing date.
- (b) Applicants for renewal of an underground storage tank contractor license shall submit the following to the department:
 - (1) A complete application on a form provided by the department;
 - (2) An annual renewal fee of \$100.00. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

K.A.R. 28-44-21. Underground storage tank installer's licensing.

- (a) Applicants for an underground storage tank installer license shall:
 - (1) Submit the following to the department:
 - (A) A completed application on a form provided by the department;
 - (B) A licensing fee of \$100.00 to secure a license to remain in force until two years from the initial licensing date. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;
 - (C) For each type of installation, evidence of successful completion of all training required by the manufacturers of the equipment to be installed or repaired under the applicant's supervision. Evidence shall include dates, locations, and names of courses completed.
 - (2) Pass the licensing examination administered by the department with a score of 70 % or greater on the general examination and the specific examination or examinations for each area to be supervised by the installer.
- (b) At least 45 days prior to expiration, applicants for renewal of an underground storage tank installer license shall:
 - (1) Submit the following items to the department:
 - (A) A completed application on a form provided by the department;
 - (B) An annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the issuance or renewal of the license. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;
 - (C) Evidence of successful completion of all training, required by the manufacturers of the equipment to be installed or repaired under the applicant's supervision. Evidence shall include dates, locations, and names of the courses.
 - (2) Pass the licensing examination administered by the department with a score of 70 % or greater on the general examination and the specific examination or examinations for each area to be supervised by the installer. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

K.A.R. 28-44-22. Underground storage tank tightness tester's licensing.

- (a) It shall be unlawful for any person to inspect, or hold oneself out as authorized to inspect underground storage tanks and associated lines unless the person is licensed in accordance with this section. Applicants for an underground storage tank tightness testing license shall:
 - (1) Submit the following to the department:
 - (A) A completed application on a form provided by the department;
 - (B) A licensing fee of \$100.00 to secure a license to remain in force until two years from the initial licensing date. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;
 - (C) Evidence of successful completion of all training, required by the manufacturers of the equipment to perform tightness testing under the applicant's supervision. Evidence shall include dates, locations, and names of courses completed.
 - (2) Pass the licensing examination administered by the department with a score of 70 % or greater.
- (b) Any license applied for may be denied or any license issued may be suspended or revoked for any underground tank storage tightness tester's license issued, pursuant to these regulations if found, after notice and an opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant or licensee, whichever is applicable, has:
 - (1) Fraudulently or deceptively obtained or attempted to obtain a license;
 - (2) Failed at any time to meet the qualifications for a license or to comply with any provision or requirement of these regulations; or
 - (3) Failed to submit, to the department, a copy of each tank tightness test performed on a regulated tank in the state of Kansas.
- (c) At least 45 days prior to expiration, applicants for renewal of an underground storage tank tightness tester's license shall:
 - (1) Submit the following to the department:
 - (A) A completed application on a form provided by the department;
 - (B) An annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the issuance or renewal of the license. No portion of the fee shall be refunded if the license is suspended, revoked or if the individual discontinues the licensed activities within the state during the licensed period;
 - (C) Evidence of successful completion of all training, required by the manufacturers of the equipment used by the tester. Evidence shall include dates, locations, and names of courses completed.
 - (2) Pass the licensing examination administered by the department with a score of 70 % or greater. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

K.A.R. 28-44-23. Release detection.

- (a) 40 CFR 280.40, 280.41, and 280.42 as in effect on September 23, 1988 are adopted by reference.

40 CFR § 280.40 General requirements for all UST systems.

- (a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:
 - (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
 - (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
 - (3) Meets the performance requirements in § 280.43 or 280.44, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, must be capable of detecting the

leak rate or quantity specified for that method in § 280.43(b), (c), and (d) or 280.44(a) and (b) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

- (b) When a release detection method operated in accordance with the performance standards in § 280.43 and § 280.44 indicates a release may have occurred, owners and operators must notify the implementing agency in accordance with Subpart E.
- (c) Owners and operators of all UST systems must comply with the release detection requirements of this Subpart by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993

Before 1965 or unknown	RD	P			
1965 thru 1969		P/RD			
1970 thru 1974		P	RD		
1975 thru 1979		P		RD	
1980 thru 1988		P			RD

New tanks (after December 22, 1988) immediately upon installation

P = Must begin release detection for all pressurized piping in accordance with 40 CFR 280.41(b)(1) and 40 CFR 280.42(b)(4).

RD = Must begin release detection for tanks and suction piping in accordance with 40 CFR 280.41(a), 40 CFR 280.41(b)(2), and 40 CFR 280.42.

- (d) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this Subpart must complete the closure procedures in Subpart G by the date on which release detection is required for that UST system under paragraph (c) of this section.

40 CFR § 280.41 Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

- (a) Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43 (d)-(h) except that:
- (1) UST systems that meet the performance standards in § 280.20 or § 280.21, and the monthly inventory control requirements in § 280.43(a) or (b), may use tank tightness testing (conducted in accordance with § 280.43(c)) at least every 5 years until [insert date 10 years and 90 days after publication of the final regulation], or until 10 years after the tank is installed or upgraded under § 280.21(b), whichever is later;
 - (2) UST systems that do not meet the performance standards in § 280.20 or § 280.21 may use monthly inventory controls (conducted in accordance with § 280.43(a) or (b)) and annual tank tightness testing (conducted in accordance with § 280.43(c)) until [insert date 10 years and 90 days after publication of the final regulation] when the tank must be upgraded under § 280.21 or permanently closed under § 280.71; and
 - (3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with § 280.43(b)).
- (b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:
- (1) Pressurized piping. Underground piping that conveys regulated substances under pressure must:
 - (i) Be equipped with an automatic line leak detector conducted in accordance with § 280.44(a); and
 - (ii) Have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).
 - (2) Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with § 280.44(b), or use a monthly monitoring method conduct in accordance with § 280.44(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:
 - (i) The below-grade piping operates at less than atmospheric pressure;
 - (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
 - (iii) Only one check valve is included in each suction line;

- (iv) The check valve is located directly below and as close as practical to the suction pump; and
- (v) A method is provided that allows compliance with paragraphs (b)(2)(ii)-(iv) of this section to be readily determined.

40 CFR § 280.42 Requirements for hazardous substance UST systems.

Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

- (a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in § 280.41. By [insert date 10 years and 90 days after publication of the final regulation], all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (b) of this section.
- (b) Release detection at new hazardous substance UST systems must meet the following requirements:

- (1) Secondary containment systems must be designed, constructed and installed to:

- (i) Contain regulated substances released from the tank system until they are detected and removed;
- (ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
- (iii) Be checked for evidence of a release at least every 30 days.

[Note: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these

requirements.]

- (2) Double-walled tanks must be designed, constructed, and installed to:

- (i) Contain a release from any portion of the inner tank within the outer wall; and
- (ii) Detect the failure of the inner wall.

- (3) External liners (including vaults) must be designed, constructed, and installed to:

- (i) Contain 100 percent of the capacity of the largest tank within its boundary;
- (ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and
- (iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

- (4) Underground piping must be equipped with secondary containment that satisfies the requirements of paragraph (b)(1) of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with § 280.44(a).

- (5) Other methods of release detection may be used if owners and operators:

- (i) Demonstrate to the implementing agency that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in §§ 280.43(b)-(h) can detect a release of petroleum;
- (ii) Provide information to the implementing agency on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and,
- (iii) Obtain approval from the implementing agency to use the alternate release detection method before the installation and operation of the new UST system.

K.A.R. 28-44-23 (b) 40 CFR 280.43 as in effect on September 23, 1988 is adopted by reference except for the following changes:

§ 280.43 Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of § 280.41 must be conducted in accordance with the following:

- (e) **Inventory control.** Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:
- (1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
 - (2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
 - (3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
 - (4) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
 - (5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and
 - (6) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

[Note: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph.]

K.A.R. 28-44-23 (b)(1) The following language shall be added to 40 CFR 280.43(a) following 40 CFR 280.43(a)(6):

- "(7) All underground storage tank systems shall utilize inventory control methods with the following exception. Waste oil storage tanks with capacities of 2000 gallons or less may utilize manual tank gauging in place of inventory control. Waste oil storage tanks using manual tank gauging shall report a suspected release if the following standards are exceeded."

S))Q		
Nominal tank capacity gallons	Weekly standard (one test)	Monthly standard (average of four tests)
S))Q		
550 or less	10 gallons	5 gallons
551 thru 1000	13 gallons	7 gallons
1001 thru 2000	26 gallons	13 gallons

40 CFR 280.43 (b) Manual tank gauging . Manual tank gauging must meet the following requirements:

- (1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;
- (2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
- (3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

K.A.R. 28-44-23 (b)(2) 40 CFR 280.43(b)(4) shall read as follow:

- "(4) A leak is suspected and subject to the requirements of Subpart E if the variation between beginning and ending measurements exceeds 10 gallons for a weekly test or 5 gallons for a monthly average of four tests."

K.A.R. 28-44-23 (b)(3) 40 CFR 280.43(b)(5) shall read as follows:

- "(5) Only tanks of 550 gallons or less nominal capacity may use this as the method of release detection."

40 CFR 280.43 (c) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

- (d) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:
- (1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and
 - (2) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of § 280.43(a).
- (e) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
- (1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
 - (2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;
 - (3) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;
 - (4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
 - (5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;
 - (6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (e)(1)-(4) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and
 - (7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

K.A.R. 28-44-23 (b)(4) 40 CFR 280.43(f) shall read as follows:

- "(f) Groundwater Monitoring. The following conditions shall exist before this release detection method can be employed at a tank site:
- (1) The stored substance is immiscible in water and has a specific gravity less than one;
 - (2) Groundwater has been encountered within the tank excavation and the tank has been buried at least partially below the groundwater surface. The hydraulic conductivity of the fill material used to backfill around the tanks is not less than 0.01 cm/sec. The monitoring wells shall intercept the excavation zone around the storage tank;
 - (3) The monitoring wells shall be constructed and located such that any contamination which is floating on the groundwater surface will be detected. The wells shall be constructed with the appropriate screen size to prevent sediments from entering the well bore. The screen shall extend from a point at least two feet above the highest water level to the base of the tank excavation;
 - (4) The monitoring wells shall be constructed to prevent surface water from entering the tank excavation through conduits created by these wells;
 - (5) Continuous or manual monitoring devices or methods shall be capable of detecting a hydrocarbon layer of 1/8 inch or greater thickness on the groundwater;
 - (6) Monitoring wells shall be clearly marked and secured to prevent unauthorized access and tampering;
 - (7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f) (1) through (5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product."

40 CFR 280.43 (g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

- (1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

[Note: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.]

- (2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;
 - (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;
 - (ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
 - (iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;
 - (iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;
 - (v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
 - (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) Other methods. Any other type of release detection method, or combination of methods, can be used if:

- (1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
- (2) The implementing agency may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c)-(h) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the implementing agency on its use to ensure the protection of human health and the environment.

K.A.R. 28-44-23 (b)(5) The following language shall be added to 40 CFR 280.43 following 40 CFR 280.43(h):

" (i) Tanks which store heating oil for consumptive use on the premises where stored, may utilize inventory control measures as a release detection method if the following conditions exist:

- (1) The owner or operator of the underground storage tank system is using inventory control as required by K.A.R. 28-44-23;
- (2) Fuel is dispensed less than 24 hours during any given month from the underground storage tank system;
- (3) No more than 500 gallons of fuel is dispensed from the system during any given month;
- (4) An inventory measurement is made immediately before and immediately after fuel is dispensed from the underground storage tank system."

K.A.R. 28-44-23 (c) 40 CFR 280.44 and 280.45 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR § 280.44 Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of § 280.41 must be conducted in accordance with the following:

- (a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.;
- (b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure;
- (c) Applicable tank methods. Any of the methods in § 280.43(e)-(h) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

40 CFR § 280.45 Release detection recordkeeping.

All UST system owners and operators must maintain records in accordance with § 280.34 demonstrating compliance with all applicable requirements of this Subpart. These records must include the following:

- (a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of time determined by the implementing agency, from the date of installation;
- (b) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, or for another reasonable period of time determined by the implementing agency, except that the results of tank tightness testing conducted in accordance with § 280.43(c) must be retained until the next test is conducted; and
- (c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the implementing agency. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation.

K.A.R. 28-44-24. Release reporting, investigation, and confirmation. 40 CFR 280.50, 280.51, 280.52, and 280.53 as in effect on September 23, 1988 are adopted by reference except that 280.53(a)(1) shall read as follows:
(Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR § 280.50 Reporting of suspected releases.

Owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and follow the procedures in § 280.52 for any of the following conditions:

- (a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);
- (b) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and,
- (c) Monitoring results from a release detection method required under § 280.41 and § 280.42 that indicate a release may have occurred unless:
 - (1) The monitoring device is found to be defective, and is immediately repaired, re-calibrated or replaced, and additional monitoring does not confirm the initial result; or
 - (2) In the case of inventory control, a second month of data does not confirm the initial result.

40 CFR § 280.51 Investigation due to off-site impacts.

When required by the implementing agency, owners and operators of UST systems must follow the procedures in § 280.52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the implementing agency or brought to its attention by another party.

40 CFR § 280.52 Release investigation and confirmation steps.

Unless corrective action is initiated in accordance with Subpart F, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under § 280.50 within 7 days, or another reasonable time period specified by the implementing agency, using either the following steps or another procedure approved by the implementing agency:

- (a) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in § 280.43(c) and § 280.44(b)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.
 - (1) Owners and operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with Subpart F if the test results for the system, tank, or delivery piping indicate that a leak exists.
 - (2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.
 - (3) Owners and operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.
- (b) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.
 - (1) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with Subpart F;
 - (2) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

40 CFR § 280.53 Reporting and cleanup of spills and overfills.

Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and begin corrective action in accordance with Subpart F in the following cases:

except that 280.53(a)(1) shall read as follows :

- "(1) Spill or overfill of petroleum that results in a release above the surface of the ground which exceeds 25 gallons, or that causes a sheen on nearby surface water; or any below ground release from an underground storage tank system regardless of the quantity."
 - (2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302).
- (b) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons or another reasonable amount specified by the implementing agency, and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, or another reasonable time period established by the implementing agency, owners and operators must immediately notify the implementing agency.

[Note: A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (40 CFR 302.6) and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986 (40 CFR 355.40).]

K.A.R. 28-44-25. Release response and corrective action for underground storage tank systems containing petroleum or hazardous substances. 40 CFR 280.60, 280.61, 280.62, 280.63, 280.64, 280.65, 280.66, and 280.67 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR § 280.60 General.

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under § 280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

40 CFR § 280.61 Initial response.

Upon confirmation of a release in accordance with § 280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the implementing agency:

- (a) Report the release to the implementing agency (e.g., by telephone or electronic mail);
- (b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- (c) Identify and mitigate fire, explosion, and vapor hazards.

40 CFR 280.62 Initial abatement measures and site check.

- (a) Unless directed to do otherwise by the implementing agency, owners and operators must perform the following abatement measures:
 - (1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
 - (2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;
 - (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
 - (4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;
 - (5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by § 280.52(b) or the closure site assessment of § 280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and
 - (6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with § 280.64.
- (b) Within 20 days after release confirmation, or within another reasonable period of time determined by the implementing agency, owners and operators must submit a report to the implementing agency summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

40 CFR § 280.63 Initial site characterization.

- (a) Unless directed to do otherwise by the implementing agency, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in § 280.60 and § 280.61. This information must include, but is not necessarily limited to the following:
 - (1) Data on the nature and estimated quantity of release;

- (2) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
 - (3) Results of the site check required under § 280.62(a)(5); and
 - (4) Results of the free product investigations required under § 280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under § 280.64.
- (b) Within 45 days of release confirmation or another reasonable period of time determined by the implementing agency, owners and operators must submit the information collected in compliance with paragraph (a) of this section to the implementing agency in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the implementing agency.

40 CFR § 280.64 Free product removal.

At sites where investigations under § 280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the implementing agency while continuing, as necessary, any actions initiated under §§ 280.61 through 280.63, or preparing for actions required under §§ 280.65 through 280.66. In meeting the requirements of this section, owners and operators must:

- (a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state and federal regulations;
- (b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- (c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- (d) Unless directed to do otherwise by the implementing agency, prepare and submit to the implementing agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:
 - (1) The name of the person(s) responsible for implementing the free product removal measures;
 - (2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
 - (3) The type of free product recovery system used;
 - (4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
 - (5) The type of treatment applied to, and the effluent quality expected from, any discharge;
 - (6) The steps that have been or are being taken to obtain necessary permits for any discharge; and
 - (7) The disposition of the recovered free product.

40 CFR § 280.65 Investigations for soil and ground-water cleanup.

- (a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:
 - (1) There is evidence that ground-water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
 - (2) Free product is found to need recovery in compliance with § 280.64;
 - (3) There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under §§ 280.60 through 280.64); and
 - (4) The implementing agency requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground-water resources.

- (b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the implementing agency.

40 CFR § 280.66 Corrective action plan.

- (a) At any point after reviewing the information submitted in compliance with § 280.61 through § 280.63, the implementing agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the implementing agency. Alternatively, owners and operators may, after fulfilling the requirements of § 280.61 through § 280.63, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the implementing agency, and must modify their plan as necessary to meet this standard.
- (b) The implementing agency will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the implementing agency should consider the following factors as appropriate:
 - (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
 - (2) The hydrogeologic characteristics of the facility and the surrounding area;
 - (3) The proximity, quality, and current and future uses of nearby surface water and ground water;
 - (4) The potential effects of residual contamination on nearby surface water and ground water;
 - (5) An exposure assessment; and
 - (6) Any information assembled in compliance with this subpart.
- (c) Upon approval of the corrective action plan or as directed by the implementing agency, owners and operators must implement the plan, including modifications to the plan made by the implementing agency. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the implementing agency.
- (d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:
 - (1) Notify the implementing agency of their intention to begin cleanup;
 - (2) Comply with any conditions imposed by the implementing agency, including halting cleanup or mitigating adverse consequences from cleanup activities; and
 - (3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the implementing agency for approval.

40 CFR § 280.67 Public participation.

- (a) For each confirmed release that requires a corrective action plan, the implementing agency must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.
- (b) The implementing agency must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.
- (c) Before approving a corrective action plan, the implementing agency may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.
- (d) The implementing agency must give public notice that complies with paragraph (a) of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the implementing agency.

K.A.R. 28-44-26. Out-of-service underground storage tank systems and closure. 40 CFR 280.70, 280.71, 280.72, 280.73, and 280.74 as in effect on September 23, 1988 are adopted by reference. (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR § 280.70 Temporary closure.

- (a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with § 280.31, and any release detection in accordance with Subpart D. Subparts E and F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.
- (b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:
 - (1) Leave vent lines open and functioning; and
 - (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.
- (c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with §§ 280.71-280.74, unless the implementing agency provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with § 280.72 before such an extension can be applied for.

40 CFR § 280.71 Permanent closure and changes-in-service.

- (a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. The required assessment of the excavation zone under § 280.72 must be performed after notifying the implementing agency but before completion of the permanent closure or a change-in-service.
- (b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled it with an inert solid material.
- (c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with § 280.72.

[Note: The following cleaning and closure procedures may be used to comply with this section:

- (A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";
- (B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";
- (C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and
- (D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard...Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.]

40 CFR § 280.72 Assessing the site at closure or change-in-service.

- (a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in § 280.43(e) and (f) is operating in accordance with the requirements in § 280.43 at the time of closure, and indicates no release has occurred.
- (b) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under paragraph (a) of this section, or by any other manner, owners and operators must begin corrective action in accordance with Subpart F.

40 CFR § 280.73 Applicability to previously closed UST systems.

When directed by the implementing agency, the owner and operator of an UST system permanently closed before [insert date 90 days after publication date of this rule] must assess the excavation zone and close the UST system in accordance with this Subpart if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.

40 CFR § 280.74 Closure records.

Owners and operators must maintain records in accordance with § 280.34 that are capable of demonstrating compliance with closure requirements under this Subpart. The results of the excavation zone assessment required in § 280.72 must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

- (a) By the owners and operators who took the UST system out of service;
- (b) By the current owners and operators of the UST system site; or
- (c) By mailing these records to the implementing agency if they cannot be maintained at the closed facility.

ATTACHMENT A

Financial Regulations



Kansas Department of Health and Environment
Underground Storage Tank
Statutes and Regulations
July 1, 2000

K.A.R. 28-44-27. Financial responsibility. 40 CFR 280.90, 280.91, and 280.93 thru 280.112 as in effect on October 26, 1988 and as amended on November 7, 1988, December 21, 1988, February 3, 1989, November 9, 1989 are adopted by reference except for the following changes:

- (a) 40 CFR 280.91 (c) shall read as follows:

"(c) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1991."

- (b) 40 CFR 280.91 (d) shall read as follows:

"(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, including all local government entities; October 26, 1991." (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR §280.90 Applicability .

- (a) This subpart applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.
- (b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in §280.91.
- (c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subpart.
- (d) The requirements of this subpart do not apply to owners and operators of any UST system described in §280.10(b) or (c).
- (e) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in §280.91.

40 CFR §280.91 Compliance Dates .

Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by the following dates:

- (a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; (insert date 90 days after date of publication in the FEDERAL REGISTER).
- (b) All petroleum marketing firms owning 100-999 USTs; (insert date 1 year after date of publication in the FEDERAL REGISTER).

K.A.R. 28-44-27(a) 40 CFR 280.91 (c) shall read as follows:

"(c) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1991."

K.A.R. 28-44-27(b) 40 CFR 280.91 (d) shall read as follows:

"(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, including all local government entities; October 26, 1991." (Authorized by and implementing K.S.A. 1989 Supp. 65-34,105; effective Nov. 26, 1990.)

40 CFR §280.93 Amount and Scope of Required Financial Responsibility .

- (a) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:
- (1) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

- (2) For all other owners or operators of petroleum underground storage tanks; \$500,000.
- (b) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
 - (1) For owners or operators of 1 to 100 petroleum underground storage tanks, \$1 million; and
 - (2) For owners or operators of 101 or more petroleum underground storage tanks, \$2 million.
- (c) For the purposes of paragraphs (b) and (f) only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.
- (d) Except as provided in paragraph (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:
 - (1) taking corrective action;
 - (2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
 - (3) compensating third parties for bodily injury and property damage caused by non-sudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.
- (e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.
- (f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.
- (g) The amounts of assurance required under this section exclude legal defense costs.
- (h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

40 CFR §280.94 Allowable Mechanisms and Combinations of Mechanisms .

- (a) Subject to the limitations of paragraphs (b) and (c) of this section, an owner or operator may use any one or combination of the mechanisms listed in §§280.95-280.103 to demonstrate financial responsibility under this subpart for one or more underground storage tanks.
- (b) An owner or operator may use a guarantee or surety bond to establish financial responsibility only if the Attorney(s) General of the state(s) in which the underground storage tanks are located has (have) submitted a written statement to the implementing agency that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in that state.
- (c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

40 CFR §280.95 Financial Test of Self-Insurance .

- (a) An owner or operator, and/or guarantor, may satisfy the requirements of §280.93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.

- (b) (1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:
 - (i) The total of the applicable aggregate amount required by §280.93, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to EPA under this section or to a state implementing agency under a state program approved by EPA under 40 CFR Part 281;
 - (ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and
 - (iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.
- (2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.
- (3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (d).
- (4) The owner or operator, and/or guarantor, must either:
 - (i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
 - (ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
- (5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (c) (1) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in §280.93(b)(1) and (b)(2) for the "amount of liability coverage" each time specified in that section.
- (2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
- (3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (d).
- (5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:
 - (i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and
 - (ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.
- (d) To demonstrate that it meets the financial test under paragraph (b) or (c), the chief financial officer of the owner or operator, and/or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "non-sudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under an authorized state program by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or a financial test under a state program approved under 40 CFR Part 281. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test or a financial test under a state program authorized under 40 CFR Part 281 by the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulation:	Amount
Closure (§§264.143 and 265.143)	\$____
Post-Closure Care (§§264.145 and 265.145)....	\$____
Liability Coverage (§§264.147 and 265.147) ..	\$____
Corrective Action (§264.101(b))	\$____
Plugging and Abandonment (§144.63)	\$____

Authorized State Programs:	Amount
Closure	\$____
Post-Closure Care	\$____
Liability Coverage	\$____
Corrective Action	\$____
Plugging and Abandonment	\$____
TOTAL	\$____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (b) of §280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (c) of §280.95 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

- Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee
\$____
- Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$____
- Sum of lines 1 and 2 \$____
- Total tangible assets \$____
- Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$____
- Tangible net worth [subtract line 5 from line 4] \$____

	Yes	No
7. Is line 6 at least \$10 million?	—	—
8. Is line 6 at least 10 times line 3?	—	—
9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? ..	—	—
10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	—	—
11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?	—	—
12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.]	—	—

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee		\$	—
2. Amount of corrective action, closure and post-closure care costs, liability cover-age, and plugging and abandonment costs covered by a financial test, and/or guarantee		\$	—
3. Sum of lines 1 and 2		\$	—
4. Total tangible assets		\$	—
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]		\$	—
6. Tangible net worth [subtract line 5 from line 4]		\$	—
7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]		\$	—
	Yes	No	
8. Is line 6 at least \$10 million?	—	—	
9. Is line 6 at least 6 times line 3?	—	—	
10. Are at least 90 percent of assets located in the U.S.? [If "No," complete line 11.]	—	—	
11. Is line 7 at least 6 times line 3?	—	—	
[Fill in either lines 12-15 or lines 16-18:]			
12. Current assets		\$	—
13. Current liabilities		\$	—
14. Net working capital [subtract line 13 from line 12]		\$	—
	Yes	No	
15. Is line 14 at least 6 times line 3?	—	—	
16. Current bond rating of most recent bond issue			—
17. Name of rating service			—
18. Date of maturity of bond			—
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?	—	—	

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.] [For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR Part 280.95(d) as suc

[Signature]

[Name]

[Title]

[Date]

- (e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.
- (f) The Director of the implementing agency may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of §280.95(b) or (c) and (d), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.
- (g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Director of the implementing agency that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Director of such failure within 10 days.

40 CFR §280.96 Guarantee.

- (a) An owner or operator may satisfy the requirements of §280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:
 - (1) A firm that
 - (i) possesses a controlling interest in the owner or operator;
 - (ii) possesses a controlling interest in a firm described under (1)(i); or,
 - (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,
 - (2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.
- (b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of §280.95 based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in §280.95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. If the Director of the implementing agency notifies the guarantor that he no longer meets the requirements of the financial test of §280.95(b) or (c) and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Director. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternate coverage as specified in §280.110(c).
- (c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to [the state implementing agency] and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

- (1) Guarantor meets or exceeds the financial test criteria of 40 CFR 280.95(b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in 40 CFR 280.96(b).
- (2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CFR 280.22 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies 40 CFR Part 280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.
- (3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to [implementing agency] and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the [Director of the implementing agency] has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the [Director], shall fund a standby trust fund in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

In the event that the [Director] determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 40 CFR Part 280, Subpart F, the guarantor upon written instructions from the [Director] shall fund a standby trust in accordance with the provisions of 40 CFR 280.108, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the [Director], shall fund a standby trust in accordance with the provisions of 40 CAR 280.108 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

- (4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 40 CAR 280.95(b) or (c) and (d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.
- (5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 40 CAR Part 280.

- (7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of 40 CAR Part 280, Subpart H for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.
- (8) The guarantor's obligation does not apply to any of the following:
- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
 - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
 - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
 - (e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CAR 280.93.
- (9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CAR 280.96(c) as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

- (d) An owner or operator who uses a guarantee to satisfy the requirements of §280.93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Director of the implementing agency under §280.108. This standby trust fund must meet the requirements specified in §280.103.

40 CAR §280.97 Insurance and Risk Retention Group Coverage .

- (a) An owner or operator may satisfy the requirements of §280.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.
- (b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (1) or evidenced by a certificate of insurance worded as specified in paragraph (2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1) **ENDORSEMENT**

Name: _____ [name of each covered location] _____

Address: [address of each covered location]

Policy Number: _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CAR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections(a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CAR 280.95-280.102.
- c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CAR 280.97(b)(l) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2)

CERTIFICATE OF INSURANCE

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured: _____

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CAR 280.22, or the corresponding state requirement, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:
- a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.
 - b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CAR 280.95-280.102.
 - c. Whenever requested by [a Director of an implementing agency], the ["Insurer" or "Group"] agrees to furnish to [the Director] a signed duplicate original of the policy and all endorsements.
 - d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.
- [Insert for claims-made policies:
- e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in 40 CAR 280.97(b)(2) and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer or Risk Retention Group]
[Address of Representative]

40 CAR §280.97(c) Insurance and Risk Retention Group Coverage .

Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

40 CAR §280.98 Surety Bond .

- (a) An owner or operator may satisfy the requirements of §280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.
- (b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable): _____

Surety(ies): _[name(s) and business address(es)]_

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided

in the notification submitted pursuant to 40 CAR 280.22, or the corresponding state requirement, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases" arising from operating the underground storage tank"].

Penal sums of bond: Per occurrence \$ _____
Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to [the implementing agency], in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with 40 CAR Part 280, Subpart F and the Director of the state implementing agency's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "non-sudden" or "sudden and non-sudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 40 CAR Part 280, Subpart H, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CAR 280.93.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by [the Director of the implementing agency] that the Principal has failed to ["take corrective action, in accordance with 40 CAR Part 280, Subpart F and the Director's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform

["corrective action in accordance with 40 CAR Part 280 and the Director's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by [the Regional Administrator or the Director] under 40 CAR 280.108.

Upon notification by [the Director] that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that [the Director] has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by [the Director] under 40 CAR 280.108.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CAR 280.98(b) as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]
State of Incorporation: _____
Liability limit: \$ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ _____

- (c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.
- (d) The owner or operator who uses a surety bond to satisfy the requirements of §280.93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Director under §280.108. This standby trust fund must meet the requirements specified in §280.103.

40 CAR §280.99 Letter of Credit .

- (a) An owner or operator may satisfy the requirements of §280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- (b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of Director(s) of state implementing agency(ies)]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. __ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation [insert, if more than one Director of a state implementing agency is a beneficiary, "by any one of you"] of

- (1) your sight draft, bearing reference to this letter of credit, No. __, and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 40 CAR 280.22, or the corresponding state requirement, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CAR 280.93.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CAR 280.99(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

- (c) An owner or operator who uses a letter of credit to satisfy the requirements of §280.93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director of the implementing agency will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director under §280.108. This standby trust fund must meet the requirements specified in §280.103.
- (d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

40 CAR §280.100 Use of State-Required Mechanism .

- (a) For underground storage tanks located in a state that does not have an approved program, and where the state requires owners or operators of underground storage tanks to demonstrate financial responsibility for taking corrective action and/or for compensating third parties for bodily injury and property damage, an owner or operator may use a state-required financial mechanism to meet the requirements of §280.93 if the Regional Administrator determines that the state mechanism is at least equivalent to the financial mechanisms specified in this subpart.
- (b) The Regional Administrator will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.
- (c) The state, an owner or operator, or any other interested party may submit to the Regional Administrator a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of §280.93. The submission must include copies of the appropriate state statutory and regulatory requirements and must show the amount of funds for corrective action and/or for compensating third parties assured by the mechanism(s). The Regional Administrator may require the petition to submit additional information as is deemed necessary to make this determination.
- (d) Any petitioner under this section may be submitted on behalf of all of the state's underground storage tank owners and operators.
- (e) The Regional Administrator will notify the petitioner of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of §280.93 for underground storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

40 CAR §280.101 State Fund or Other State Assurance .

- (a) An owner or operator may satisfy the requirements of §280.93 for underground storage tanks located in a state, where EPA is administering the requirements of this subpart, which assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in §280.93 or otherwise assures that such costs will be paid if the Regional Administrator determines that the state's assurance is at least equivalent to the financial mechanisms specified in this subpart.
- (b) The Regional Administrator will evaluate the equivalency of a state fund or other state assurance principally in terms of: certainty of the availability of funds for taking corrective action and/or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The Regional Administrator may also consider other factors as is necessary.

- (c) The state must submit to the Regional Administrator a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of underground storage tanks to which the funds may be applied. The Regional Administrator may require the state to submit additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the Regional Administrator, the owner or operator of a covered class of USTs will be deemed to be in compliance with the requirements of §280.93 for the amounts and types of costs covered by the state fund or other state assurance.
- (d) The Regional Administrator will notify the state of his determination regarding the acceptability of the state's fund or other assurance in lieu of financial mechanisms specified in this subpart. Within 60 days after the Regional Administrator notifies a state that a state fund or other state assurance is acceptable, the state must provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the state must include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action and/or for compensating third parties that is assured by the state. The owner or operator must maintain this letter or certificate on file as proof of financial responsibility in accordance with §280.107(b)(5).

40 CAR §280.102 Trust Fund .

- (a) An owner or operator may satisfy the requirements of §280.93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
- (b) The wording of the trust agreement must be identical to the wording specified in §280.103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in §280.103(b)(2).
- (c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.
- (d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Director of the implementing agency for release of the excess.
- (e) If other financial assurance as specified in this subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Director of the implementing agency for release of the excess.
- (f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (d) or (e) of this subpart, the Director of the implementing agency will instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

40 CAR §280.103 Standby Trust Fund .

- (a) An owner or operator using any one of the mechanisms authorized by §§280.96, 280.98, or 280.99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
- (b)(i) The standby trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of ____" or "a national bank"], the "Trustee."

[Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement.);

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

[Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to [the Director of the implementing agency's] instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by [the state implementing agency].

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]. The Trustee shall make payments from the Fund as [the Director of the implementing agency] shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 40 CAR 280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by [the Director], from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as [the Director] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as [the Director] specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund.

All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by [the Director of the implementing agency] to the Trustee shall be in writing, signed by [the Director], and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or [the Director] hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or [the Director], except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency] if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and [the Director of the implementing agency], if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or [the Director of the implementing agency] issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CAR 280.103(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]

Attest:

[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]

Attest:

[Signature of Witness]
[Name of Witness]
[Title]
[Seal]

- (2) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following. State requirements may differ on the proper content of this acknowledgment.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]

- (c) The Director of the implementing agency will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.
- (d) an owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

40 CAR §280.104 Substitution of Financial Assurance Mechanisms by Owner or Operator

- (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of §280.93.
- (b) After obtaining alternate financial assurance as specified in this subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

40 CAR §280.105 Cancellation or Nonrenewal by a Provider of Financial Assurance

- (a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.
- (1) Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

- (2) Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- (b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in §280.106, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Director of the implementing agency of such failure and submit:
 - (1) The name and address of the provider of financial assurance;
 - (2) The effective date of termination; and
 - (3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with §280.107(b).

40 CAR §280.106 Reporting by Owner or Operator .

- (a) An owner or operator must submit the appropriate forms listed in §280.107(b) documenting current evidence of financial responsibility to the Director of the implementing agency:
 - (1) Within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under §§280.53 or 280.61;
 - (2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:
 - (i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
 - (ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
 - (iii) Failure of a guarantor to meet the requirements of the financial test,
 - (iv) Other incapacity of a provider of financial assurance; or
 - (3) As required by §§280.95(g) and 280.105(b).
- (b) An owner or operator must certify compliance with the financial responsibility requirements of this Part as specified in the new tank notification form when notifying the appropriate state or local agency of the installation of a new underground storage tank under §280.22.
- (c) The Director of the Implementing Agency may require an owner or operator to submit evidence of financial assurance as described in §280.107(b) or other information relevant to compliance with this subpart at any time.

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050-0066.)

40 CAR §280.107 Recordkeeping .

- (a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for an underground storage tank until released from the requirements of this subpart under §280.109. An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the implementing agency.
- (b) An owner or operator must maintain the following types of evidence of financial responsibility:
 - (1) An owner or operator using an assurance mechanism specified in §§280.95-280.100 or §280.102 must maintain a copy of the instrument worded as specified.
 - (2) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

- (3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- (4) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.
- (5) An owner or operator covered by a state fund or other state assurance must maintain on file a copy of any evidence of coverage supplied by or required by the State under §280.101(d).
- (6) An owner or operator using an assurance mechanism specified in §§280.95-280.102 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of Subpart H of 40 CAR Part 280.

The financial assurance mechanism[s] used to demonstrate financial responsibility under Subpart H of 40 CAR Part 280 is[are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases."]

[Signature of owner or operator]
 [Name of owner or operator]
 [Title]
 [Date]

[Signature of witness or notary]
 [Name of witness or notary]
 [Date]

The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

(The information requirements in this section have been approved by the Office of Management and Budget and assigned OMB control number 2050-0066.)

40 CAR §280.108 Drawing on Financial Assurance Mechanisms

- (a) The Director of the implementing agency shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:
 - (1)
 - (i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and
 - (ii) The Director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Director pursuant to Subparts E or F of a release from an underground storage tank covered by the mechanism; or
 - (2) The conditions of paragraph (b)(1) or (b)(2)(i) or (b)(2)(ii) are satisfied.
- (b) The Director of the implementing agency may draw on a standby trust fund when:
 - (1) The Director makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 40 CAR Part 280, Subpart F; or

(2) The Director has received either:

- (i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[___].

[Signatures]
Owner or Operator
Attorney for
Owner or Operator

[Signature(s)]
Claimant(s)
Attorney(s) for
Claimant(s)

(Notary) Date

(Notary) Date

; or

- (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subpart and the Director determines that the owner or operator has not satisfied the judgment.
- (c) If the Director of the implementing agency determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Director shall pay third-party liability claims in the order in which the Director receives certifications under paragraph (b)(2)(i) and valid court orders under paragraph (b)(2)(ii).

40 CAR §280.109 Release from the Requirements .

An owner or operator is no longer required to maintain financial responsibility under this subpart for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by 40 CAR Part 280, Subpart G.

40 CAR §280.110 Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance .

- (a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Director of the implementing agency by certified mail of such commencement and submit the appropriate forms listed in §280.107(b) documenting current financial responsibility.
- (b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in §280.96.
- (c) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Director of the implementing agency.
- (d) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

40 CAR §280.111 Replenishment of Guarantees, Letters of Credit, or Surety Bonds .

- (a) If at any time after a standby trust is funded upon the instruction of the Director of the implementing agency with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:
 - (1) Replenish the value of financial assurance to equal the full amount of coverage required, or
 - (2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.
- (b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by §280.93 of this Subpart. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

40 Car §280.112 Suspension of Enforcement . (reserved)

PART 281--APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

- 4. The Authority citation for Part 281 continues to read as follows:

Authority: Sections 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991(c), (d), (e)).

- 5. 40 CAR Part 281 is amended to add Section 281.37 as follows:

40 CAR §281.37 Financial Responsibility for UST Systems Containing Petroleum

- (a) In order to be considered no less stringent than the federal requirements for financial responsibility for UST systems containing petroleum, the state requirements for financial responsibility for petroleum UST systems must ensure that: (1) owners and operators have \$1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment; (2) owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have \$500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment; (3) owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of \$1 million; and (4) owners and operators of 101 or more petroleum USTs must have an annual aggregate of \$2 million.
- (b) Phase-in of requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within 18 months after the effective date of the federal regulations.
- (c) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanism must: be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; ensure that funds will only and directly be used for corrective action and third party liability costs; and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage.
- (d) States must require owners and operators to maintain records that demonstrate compliance with the state financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.